

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RC PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 05-RC-228322	Date Filed 10-01-2018

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer North American Security / Triple Canopy	2b. Address(es) of Establishment(s) Involved (Street and number, city, state, ZIP code) 3300 75th Ave Landover MD 30785
--	---

3a. Employer Representative - Name and Title Mark B Freeman / Nicole Radford	3b. Address (If same as 2b - state same) 550 E Carson Plaza Dr. Suite 222 Carson CA 90745 / 2016 Sunrise Valley Drive, Suite 140 Reston VA 20191
--	--

3c. Tel. No. NA	3d. Cell No. NA /240-640-9396	3e. Fax No. NA	3f. E-Mail Address mark.freeman@dodis.mil / texasstgtpie20@yahoo.com
---------------------------	---	--------------------------	--

4a. Type of Establishment (Factory, mine, wholesaler, etc.) Government (DIA)	4b. Principal product or service Security	5a. City and State where unit is located: Landover MD
--	---	---

5b. Description of Unit Involved Included: all fulltime and part time armed and unarmed security officers employed by the employer Excluded: clerical, managerial, salaried, and supervisory personnel as defined by the act	6a. No. of Employees in Unit: 40
--	--

6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? Yes ☒ No ☐

Check One: ☐ 7a. Request for recognition as Bargaining Representative was made on (Date) **NA** and Employer declined recognition on or about **NA** (Date) (If no reply received, so state). **NA**
☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent (If none, so state). SECURITY, POLICE, AND FIRE PROFESSIONALS OF AMERICA	8b. Address 25510 KELLY RD ROSEVILLE MI 48066
---	---

8c. Tel. No. (586) 772-7250	8d. Cell No. NA	8e. Fax No. 586-772-9644	8f. E-Mail Address spfpapres@spfpa.org
---------------------------------------	---------------------------	------------------------------------	--

8g. Affiliation, if any SPFPA INTERNATIONAL UNION	8h. Date of Recognition or Certification NA	8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year) 09/29/18
---	---	--

9. Is there now a strike or picketing at the Employer's establishment(s) involved? **NA** If so, approximately how many employees are participating? **NA**
(Name of labor organization) **NA** has picketed the Employer since (Month, Day, Year) **NA**

10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)
NA

10a. Name NA	10b. Address NA	10c. Tel. No. NA	10d. Cell No. NA
		10e. Fax No. NA	10f. E-Mail Address NA

11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.

11a. Election Type: <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail

11b. Election Date(s): first available	11c. Election Time(s): 05:30-0800, 13:30-1600, 1900-1900	11d. Election Location(s): work site, or a location near work site
---	--	---

12a. Full Name of Petitioner (including local name and number) United Government Security Officers of America and its Local 286	12b. Address (street and number, city, state, and ZIP code) 2879 Cranberry Highway East Wareham, MA 02538
---	---

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (If none, so state) United Government Security Officers of America International Union
--


12d. Tel. No. 617-820-7225	12e. Cell No. 617-820-7225	12f. Fax No. NA	12g. E-Mail Address Mleblanc@ugsoa.com
--------------------------------------	--------------------------------------	---------------------------	--

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title Mike LeBlanc DHS Vice President UGSOA International Union	13b. Address (street and number, city, state, and ZIP code) 2879 Cranberry Highway East Wareham, MA 02538
---	---

13c. Tel. No. 617-820-7225	13d. Cell No. 617-820-7225	13e. Fax No. NA	13f. E-Mail Address Mleblanc@ugsoa.com
--------------------------------------	--------------------------------------	---------------------------	--

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print) Mike LeBlanc	Signature 	Title DHS Vice President UGSOA International Union	Date 10/1/18
-------------------------------------	--	--	------------------------

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

NORTH AMERICAN SECURITY, INC./
TRIPLE CANOPY

Employers

and

Case 05-RC-228322

UNITED GOVERNMENT SECURITY OFFICERS OF
AMERICA (UGSOA) AND ITS LOCAL 286

Petitioner

and

INTERNATIONAL UNION, SECURITY, POLICE,
AND FIRE PROFESSIONALS OF AMERICA
(SPFPA) AND ITS LOCAL NO. 444

Intervenor

ORDER DISMISSING PETITION AND DISMISSING NOTICE OF HEARING

On October 1, 2018, United Government Security Offices of America (UGSOA) and its Local 286 ("the Petitioner"), filed a petition seeking to represent the full-time and regular part-time armed and unarmed security officers employed by North American Security ("North American") and Triple Canopy ("Triple Canopy") (jointly "the Employers") at the federal government facility located at 3300 75th Avenue, Landover, Maryland ("the Landover facility.")

An administrative investigation of the instant petition revealed that the Employers provide guard services at the Landover facility as a prime contractor and subcontractor. The Employers have entered into separate collective-bargaining agreements with International Union, Security, Police, and Fire Professionals of America and its Local 444 (hereinafter "the Intervenor"). The recently expired collective bargaining agreements were effective from September 1, 2015 through September 29, 2018. The investigation revealed that the Intervenor and the Employers signed the successor collective-bargaining agreements on September 25, 2018, and that those agreements became effective on October 1, 2018, the filing date of the petition in this case. Further, the investigation revealed that the collective-bargaining agreements cover non-economic and economic terms and conditions of employment for security guards employed by the Employers at the Landover facility, which are the employees sought in the instant petition. Finally, neither collective-bargaining agreement contains provisions requiring members of the bargaining unit to ratify the agreement as a condition of the agreement's validity.

Because the written agreements between the Employers and Intervenor appeared to bar the instant petition under the Board's contract bar doctrine, on October 4, 2018, I issued a Notice to Show Cause as to whether the instant petition should be dismissed based on the Board's decisions in *Appalachian Shale Products Co.*, 121 NLRB 1160, 1162-64 (1958), and *Waste Management of Maryland*, 338 NLRB 1002, 1002-03 (2003). On October 5, October 8, and October 9, 2018, the Petitioner sent e-mail messages attaching some evidence that unit employees had not ratified the collective-bargaining agreements in this matter. On October 9, 2018, the Petitioner also argued that the election in this case should move forward because the Intervenor signed the collective-bargaining agreements in question without member ratification of the agreements.

The Petitioner provided no citation to any case law in support of its argument described above. On the contrary, the Board has observed that ratification is only a necessary element of a contract bar defense where the contract explicitly requires ratification as a condition precedent to contract validity. *See, e.g., Appalachian Shale*, 121 NLRB at 1162-63. The agreements at issue in this case contain no such provisions. Further, there was no evidence presented to rebut the documentary evidence that the Intervenor and the Employers signed the agreements before the Petitioner filed the petition in this case, and the filing date of the petition was not prior to effective dates contained in those agreements. I am therefore administratively dismissing this case because the collective-bargaining agreements the Intervenor and the Employers signed on September 25, 2018, with an effective date of October 1, 2018, bar the petition.

Accordingly, further proceedings on the petition are not warranted, and

IT IS ORDERED that the petition filed in this case is dismissed and,

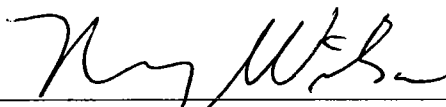
IT IS FURTHER ORDERED that the Notice of Hearing that previously issued in this matter is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by **October 24, 2018**.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated at Baltimore, Maryland this 10th day of October, 2018.

A handwritten signature in black ink, appearing to read 'Nancy Wilson', is written over a horizontal line.

Nancy Wilson, Acting Regional Director
National Labor Relations Board, Region 5
Bank of America Center – Tower II
100 South Charles Street, Suite 600
Baltimore, Maryland 21201

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

RD PETITION

DO NOT WRITE IN THIS SPACE

Case No.

31-RD-228771

Date Filed

10/5/2018

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RD- DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. **The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.**

2a. Name of Employer
USC Verdugo Hills Hospital

2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code)
1812 Verdugo Blvd
CA Glendale 91208-1409

3a. Employer Representative - Name and Title
Kristi Cohen Human Resources Director

3b. Address (If same as 2b - state same)
1812 Verdugo Blvd
CA Glendale 91208-1409

3c. Tel. No.
(818) 952-3561

3d. Cell No.

3e. Fax No.

3f. E-Mail Address
kristi.cohen@vhh.usc.edu

4a. Type of Establishment (Factory, mine, wholesaler, etc)
Healthcare Facilities

4b. Principal product or service
Healthcare

5a. City and State where unit is located:
Glendale, CA

5b. Description of Unit Involved

Included: See Attached Page 2 for additional details

Excluded: See Attached Page 2 for additional details

6a. No. of Employees in Unit:
228

6b. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative? Yes ☒ No ☐

Check One: ☐ **7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about _____ (Date) (If no reply received, so state).**

☒ **7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.**

8a. Name of Recognized or Certified Bargaining Agent

Service Employees International Union- United Healthcare Workers West Maria Unzueta U

8b. Address 5480 Ferguson Dr
CA Commerce 90022-5119

8c. Tel No.
(323) 734-8399

8d Cell No.
(323) 346-9775

8e. Fax No.
(323) 721-3538

8f. E-Mail Address
munzueta@seiu-uhw.org

8g. Affiliation, if any

SEIU

8h. Date of Recognition or Certification

8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)

9. Is there now a strike or picketing at the Employer's establishment(s) involved? No ☒ If so, approximately how many employees are participating? _____
(Name of labor organization) _____, has picketed the Employer since (Month, Day, Year) _____.

10. Organizations or individuals other than those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)

10a. Name

10b. Address

10c. Tel. No.

10d. Cell No.

10e. Fax No.

10f. E-Mail Address

11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.

11b. Election Date(s):
10/21-2018-10/28/2018

11c. Election Time(s):
0600-23-59

11a. Election Type: ☐ Manual ☐ Mail ☒ Mixed Manual/Mail

11d. Election Location(s):
1812 Verdugo Blvd Glendale, CA 91208-Council Rooms

12a. Full Name of Petitioner (b) (6), (b) (7)(C)

12b. Address (street and number, city, state, and ZIP code)
(b) (6), (b) (7)(C)

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state) CA Pacoima 91331-6811

None

12d. Tel No.

(b) (6), (b) (7)(C)

12e. Cell No.

(b) (6), (b) (7)(C)

12f. Fax No.

(b) (6), (b) (7)(C)

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding

13a. Name and Title

13b. Address (street and number, city, state, and ZIP code)

13c. Tel No.

13d. Cell No.

13e. Fax No.

13f. E-Mail Address

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print)

(b) (6), (b) (7)(C)

S.

(b) (6), (b) (7)(C)

Title

Date

10/5/2018 09:55:48

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Attachment

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
31-RD-228771	10/5/2018

Employees Included

All full-time, regular part-time, and per diem non-professional service employees, including Clerk-Same Day Surgery, Unit Secretary, CT/MRI Patient Coord, Storekeeper/Records Clerk, Buyer, Patient Service Rep, OR Scheduler/ORT, Lab Collection Coordinator, CPD Processing Tech, Surg Scheduler/ ORT, CPD Technician, OB Tech, Cert Phlebotomist I, Cert Phleb II, Sr. Cert Phleb II, Lead Spec Diag Tech, Surg Tech, GI Tech, Surgical Materials Coordinator, Unt Sec/MNT Tech, Activity Leader 8HR, Front Office Coordinator/Medical Imaging Radiology Receptionist, LVN, Patient Ambassador, Rad Receptionist, Activity Aide, CAN, Emergency Nurse Assistant, Nurse Assistant, Orderly, Pathology Lab Asst, PT Aide I, ED Tech, and PMR Secretary employed by the Employer at its acute care facilities located at 1808, 1812, and 1818 Verdugo Boulevard, Glendale CA 91208.

Employees Excluded

All Managers, Supervisors and Confidential Employees



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 31
11500 W Olympic Blvd., Suite 600
Los Angeles, CA 90064-1753

Agency Website: www.nlrb.gov
Telephone: (310)235-7351
Fax: (310)235-7420

October 25, 2018

GLENN M TAUBMAN, ATTORNEY AT LAW
C/O NATIONAL RIGHT TO WORK
LEGAL DEFENSE FOUNDATION, INC.
8001 BRADDOCK RD., SUITE 600
SPRINGFIELD, VA 22151-2110

Re: USC Verdugo Hills Hospital
Case 31-RD-228771

DEAR MR. TAUBMAN:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

Decision to Dismiss: As a result of the investigation, I find that further proceedings are unwarranted. In the course of investigating this matter, on October 15, 2018, the Acting Regional Director issued an Order to Show Cause. After having considered information disclosed during the investigation as well as considering the responses filed to the Order to Show Cause by all parties, I conclude that the petition filed on October 5, 2018, is untimely because it was filed after the expiration of the relevant “window period” and during the relevant insulated period.

The investigation disclosed that USC Verdugo Hills Hospital (Employer) is a health care institution within the meaning of Section 2(14) of the Act. The Employer and Service Employees International Union - United Healthcare Workers-West (Union), are parties to a collective-bargaining agreement (Agreement), which indicates on its face that it is effective from January 1, 2016 and January 31, 2019. The Agreement covers the employees encompassed by the petition in this matter.

The parties to an agreement which is approaching its expiration date are provided with a 60-day “insulated period” during which petitions may not be filed in order to afford the parties to an expiring contract an opportunity to negotiate without the disruption of a rival petition. *Deluxe Metal Furniture*, 121 NLRB 995, 1000 (1958); *Crompton Co.*, 260 NLRB 417, 418 (1981). There is a “window period,” during which petitions may be filed prior to the commencement of the insulated period. The window period is generally 60-90 days prior to the expiration of the contract. *Crompton*, at 418. However, with respect to health care institutions, the open period during which a petition may be filed is more than 90 days but not over 120 days before the terminal date of any agreement, which is followed by an insulated period during which no petition can be timely filed. *Trinity Lutheran Hospital*, 218 NLRB 199 (1975).

It also is important to note, however, that a contract having a fixed term of more than 3 years “is treated for contract bar purposes as expiring on its third anniversary date.” *Coca-Cola Enterprises*, 352 NLRB 1044, 1045 (2008), citing *General Cable Corp.*, 139 NLRB 1159 (1962). Since contracts with a duration in excess of 3 years are treated as if they expired on the third anniversary date for the purpose of the Board’s contract bar rules, a petition is dismissed where it is not filed during the “window period” of more than 60 but no more than 90 days prior to the third anniversary date, rather than from the expiration date designated in the contract. *Union Carbide Corp.*, 190 NLRB 191, 192 (1971). In this case, since the Agreement is effective for more than 3 years, the contract is treated as expiring on its third anniversary date for contract bar purposes and it is the third anniversary from the effective date that determines the window period. Since the Employer is in the health care industry, the window period when petitions could be filed would be 90-120 days prior to the third year anniversary date. The third year anniversary date is January 1, 2019. Thus, the window period in which to timely file a petition in this matter ran from September 4, through October 3, 2018. As the petition was filed on October 5, 2018, it is, therefore, untimely.

The Petitioner and Employer argue that because the “window period” in the health care setting is different, and *Trinity Lutheran* was decided after *Union Carbide*, the 90-120 day period from the expiration date established in *Trinity Lutheran* should be applied here and the petition processed. I am not persuaded by this argument. In essence, the Petitioner and Employer argue that the contract bar limitation to three years described in *General Cable* should not be applied to the health care industry. However, neither Petitioner nor the Employer have provided case support that establishes the non-applicability of a three-year limitation on contract bars to the healthcare industry. Furthermore, although *General Cable* was decided prior to *Trinity Lutheran*, it is noteworthy that when the Board extended the reasonable period of a contract bar to three years in *General Cable*, the Board stated that all other contract-bar rules, whether related or unrelated to the subject of contract term, remain unaltered and the 3-year rule is intended to be read in harmony with them. Applying the policies of *Trinity Lutheran* and *General Cable* in an harmonious manner, I conclude that when a collective-bargaining agreement involving an employer in the healthcare industry is in effect for more than three years, as is the case here, the open period and insulated period should be determined from the three year anniversary of the effective date of the agreement, not the expiration of the agreement.

The Petitioner and Employer also argue that the petition should be considered timely under the holding of *Vanity Fair Mills, Inc.*, 256 NLRB 1104, 1106 (1981). In *Vanity Fair*, the Board allowed an untimely petition to be processed because the petitioner received erroneous advice by the Regional Office on three occasions, including twice in writing. I find the situation here to be distinguishable from the situation in *Vanity Fair Mills*. The Petitioner in this matter, who asserts he did not have legal counsel at the time, states that he relied on the Board’s guidance from its public website to determine the window period to file the petition. The Board website states with respect to decertification petitions that “if your employer and union reach a collective-bargaining agreement, you cannot ask for a decertification election (or an election to bring in another union) during the first three years of that agreement, except during a 30-day ‘window period.’ That period begins 90 days and ends 60 days before the agreement expires (120 and 90 days if your employer is a healthcare institution).” Thus, the language on the

Board's website is given in the context of the first three years of an agreement. Although the Board's website does not cover all possible contingencies, this case is distinguishable from *Vanity Fair*, a situation where Board agents affirmatively provided inaccurate information. Furthermore, the Agency website does not purport to be a complete summation. In fact, the public website contains the following disclosure language and encourages the public to contact the nearest Regional Office for further assistance:

This application may not be cited as legal authority. Particular statements may be subject to unstated exceptions, qualifications, and/or limitations, and may even be rendered unreliable without prior notice by changes in the law. In addition, although we have sought to provide broad general guidance, we do not claim completeness. In other words, you may be subject to prohibitions under the National Labor Relations Act that are not set forth here. The National Labor Relations Board expressly disclaims any purpose or intent to furnish legal advice. You may contact your nearest regional Board office and/or an attorney to discuss your specific situation or to learn more about your rights and obligations under the NLRA.

Here, the Petitioner does not claim to have contacted a Regional office for assistance in determining the open period before filing his petition.

Accordingly, I am dismissing the petition in this matter.

Right to Request Review: Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.

Procedures for Filing Request for Review: A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **November 8, 2018**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on November 8, 2018.**

Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could

not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,



MORI RUBIN
REGIONAL DIRECTOR

cc: Office of the Executive Secretary (by e-mail)

Maria Unzueta, Union Representative/Organizer
Hospital Division
Service Employees International Union- United
Healthcare Workers West
5480 Ferguson Dr.
Commerce, CA 90022-5119

Monica T. Guizar, Attorney at Law
Weinberg Roger & Rosenfeld
800 Wilshire Blvd., Suite 1320
Los Angeles, CA 90017

Kristi Cohen, Human Resources Director
USC Verdugo Hills Hospital
1812 Verdugo Blvd.
Glendale, CA 91208-1409

Jeffrey S. Bosley, Esq.
Davis Wright Tremaine LLP
505 Montgomery St., Suite 800
San Francisco, CA 94111-6533

Tyler S. Maffia, Esq.
Davis Wright Tremaine, LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111

Colin D. Wells, Esq.
Davis Wright Tremaine, LLP
505 Montgomery St., Suite 800
San Francisco, CA 94111-6533

(b) (6), (b) (7)(C)

[REDACTED]

[REDACTED]

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
RC PETITION

DO NOT WRITE IN THIS SPACE

Case No.

29-RC-235555

Date Filed

2/8/19

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlrb.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer: ETNA Prestige Technology		2b. Address(es) of Establishment(s) involved (Street and number, City, State, ZIP code): 46 Harriet Place Lynbrook, NY 11563	
3a. Employer Representative - Name and Title: Nelson Martayan President		3b. Address (if same as 2b - state same): Same	
3c. Tel. No. 516-593-2111	3d. Cell No.	3e. Fax No. 516-593-4799	3f. E-Mail Address info@etnapt.com
4a. Type of Establishment (Factory, mine, wholesaler, etc.) Construction Sales and Fabrication Office		4b. Principal Product or Service HVAC Installation & Maintenance	5a. City and State where unit is located: Lynbrook, NY
5b. Description of Unit Involved: Included: All full time & part time sheet metal workers, installers and fabricators Excluded: Service employees, insulators, clerical/managerial employees			6a. Number of Employees in Unit: 31 6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Check One: <input type="checkbox"/> 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state). <input type="checkbox"/> 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.			
8a. Name of Recognized or Certified Bargaining Agent (if none, so state) None		8b. Address:	
8c. Tel. No.	8d. Cell No.	8e. Fax No.	8f. E-Mail Address
8g. Affiliation, if any:		8h. Date of Recognition or Certification	8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)
9. Is there now a strike or picketing at the Employer's establishment(s) involved? <u>No</u> If so, approximately how many employees are participating? _____ (Name of Labor Organization) _____ has picketed the Employer since (Month, Day, Year) _____			
10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)			
10a. Name	10b. Address	10c. Tel. No.	10d. Cell No.
		10e. Fax No.	10f. E-Mail Address
11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election: Petitioner requests an election		11a. Election Type: <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail	
11b. Election Date(s): February 26, 2019		11c. Election Time(s): 8:00a.m.-11:00a.m./3:30p.m.-5:30p.m.	11d. Election Location(s): Same as 2b.
12a. Full Name of Petitioner (including local name and number): International Association of Sheet Metal, Air, Rail and Transportation Workers Local Union No. 28		12b. Address (street and number, city, State and ZIP code): 500 Greenwich Street, Suite 502 New York, NY 10013	
12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state): International Association of Sheet Metal, Air, Rail and Transportation Workers			
12d. Tel. No. 212-941-7700	12e. Cell No.	12f. Fax No. 212-226-0304	12g. E-Mail Address dmoscol@local28ba.com
13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.			
13a. Name and Title: Thomas P. Keane Attorney		13b. Address (street and number, city, State and ZIP code): 100 Crossways Park Drive West, Suite 200 Woodbury, NY 11797	
13c. Tel. No. 516-248-5757	13d. Cell No.	13e. Fax No. 516-742-1765	13f. E-Mail Address tpk@cohmlaw.com
I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.			
Name (Print) Thomas P. Keane	Signature <i>Thomas P. Keane</i>	Title Attorney	Date 02/05/19

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

ETNA PRESTIGE TECHNOLOGY, INC.
Employer¹

and

INTERNATIONAL ASSOCIATION OF SHEET
METAL, AIR, RAIL, AND TRANSPORTATION
WORKERS LOCAL UNION NO. 28
Petitioner

Case No. 29-RC-235555

and

UNITED SERVICE WORKERS UNION, IUJAT,
LOCAL 355
Intervenor

DECISION AND ORDER

Etna Prestige Technology, Inc. (“the Employer” or “Etna”) has been engaged in the construction business performing sheet metal, piping and HVAC work.

On February 8, 2019, International Association of Sheet Metal, Air, Rail, and Transportation Workers Local Union No. 28 (“the Petitioner” or “Local 28”) filed a petition in the instant case under Section 9(c) of the National Labor Relations Act (“the Act”) seeking to represent a unit of all full-time and part-time sheet metal workers, installers and fabricators employed by the Employer, but excluding service employees, insulators, clerical/managerial employees. United Service Workers Union, IUJAT, Local 355 (“the Intervenor” or “Local 355”) intervened on the basis of its collective bargaining agreement with the Employer, effective by its terms from November 1, 2018 through May 31, 2020. The collective bargaining agreement (“the 2018-2020 contract”) covers certain employees of the Employer, including some but not all of the employees in the petitioned-for unit.²

¹ The name of the Employer is amended to reflect its full and correct name as set forth in a stipulation of the parties. See Board Exhibit 2.

² It is undisputed that the contractual unit does not cover the Employer’s fabricators working at its shop located in Lynbrook, New York, or employees working at the Ritz-Carlton job site, both of which are sought by the Petitioner. Conversely, the contractual unit includes HVAC service employees, a classification specifically excluded in the petitioned-for unit.

The primary issue presented for hearing was whether the 2018-2020 contract is a members only agreement and thus, inadequate to bar the processing of the petition to an election, as alleged by the Petitioner. The Intervenor and the Employer take the position that the contract is not a members only agreement and that the 2018-2020 contract bars the petition. In the event that the contract was determined to be a members only agreement, the second issue presented concerns whether the petitioned-for unit is appropriate for the purposes of an election. The Petitioner contends that the petitioned-for unit is appropriate. The Employer and the Intervenor contend that the petitioned-for unit is inconsistent with the unit set forth in the 2018-2020 contract and is inappropriate.

A hearing officer of the Board held a hearing on these issues and the parties submitted post-hearing briefs. Based on the record and relevant Board law, for the purposes of the processing the representation petition, I find that the 2018-2020 contract is not a members only agreement and thus, adequate to bar an election in the bargaining unit set forth in the 2018-2020 contract. I recognize that the bargaining unit set forth in the 2018-2020 agreement does not include the Employer's shop employees, including the petitioned-for fabricators working in the Employer's facility located at 46 Harriet Place, Lynbrook, New York. The Petitioner has not indicated a desire to proceed to an election in a unit other than the petitioned-for unit. Further, there is insufficient record evidence regarding the Employer's shop employees to direct an election in a unit of said employees. I also note that while the Petitioner seeks to include employees working at the Ritz Carlton jobsite in the petitioned-for unit and said employees are specifically excluded from the contractual unit, the record does not indicate that the Petitioner seeks the classifications of the employees remaining on that nearly completed job. Accordingly, I do not direct any election herein. I shall dismiss the instant petition for the reasons further set forth below.

FACTS:

Background

On February 6, 2019, the Petitioner filed an unfair labor practice charge in Case No. 29-CA-235407, alleging that, within the past six months, the Employer interfered with employees' right to self-organize by voluntarily recognizing and providing financial and other support to a rival union (the Intervenor) that does not have majority support of the employees that it seeks to represent in order to undermine the Petitioner's employee organizing campaign. On February 8, 2019, the instant petition was filed. The undersigned determined that the unfair labor practice charge in Case No. 29-CA-235407 blocked the processing of the instant petition. (Board Exhibit 1(b)). However, on March 29, 2019, the charge was withdrawn by the Petitioner and the Region resumed the processing of the petition.

During the processing of the petition, the Employer and the Intervenor presented evidence that on November 1, 2018, they entered into the above-mentioned 2018-2020 contract. The Employer and the Intervenor argued that the agreement encompassed the unit of employees sought

in the petition and that it served to bar proceeding to an election herein. The Petitioner asserted that the 2018-2020 contract should not operate as a bar to an election because it was applied only to members of the Intervenor and not to all employees in the bargaining unit. After a review of the 2018-2020 contract, the Region administratively determined that by its terms, the contract applies to all employees in the contractual bargaining unit and not only to members of the Intervenor. The Petitioner requested reconsideration of the Region's administrative decision, asserting, *inter alia*, that it could provide evidence that the Employer has not applied the terms of the contract to all of the employees in the bargaining unit. Accordingly, on April 9, 2019, the undersigned issued a Notice to Show Cause requiring the Petitioner to respond, in writing, with supportive documentation, as to why the petition should not be dismissed under the established contract bar policy of the National Labor Relations Board. In response, on April 16, 2019, the Petitioner submitted an offer of proof consisting of a summary of the testimony of five unnamed individuals in support of its position that the 2018-2020 contract should not operate as a bar to an election because it has been applied only to members of the Intervenor and not to all members of the bargaining unit. The Petitioner's offer of proof contended essentially that one employee witness would testify that upon becoming a member of the Intervenor, his pay was increased; that two employee witnesses would testify that they never received information on the Intervenor or an opportunity to sign up for its benefits, they were required to work under dangerous working conditions that the Intervenor's members were not subjected to, and they were denied vacation pay; and that another two witnesses would testify that they never spoke to the Intervenor but the Employer presented them with documents to sign indicating that they would be members of the Intervenor and receive their health benefits and after they became members, they received benefits of the contract. Further the Petitioner noted that its petition does not seek to represent service employees who are not historically part of its jurisdiction, but who are included in the contractual unit, and claims that the Intervenor cannot show that it has a majority support from employees in the petitioned-for unit. The issue of the Intervenor's representative status under the Act was not raised by the Petitioner in its offer of proof.³

Employer's Hierarchy

At the top of the Employer's hierarchy is the President/Owner Nelson Martayan, who is followed by Operations Manager Donnicks. Under Operations Manager Donnicks are the Project Managers (including the Project Manager of the Garvies Point jobsite, William Ruddick) and Human Resources Manager CoraRose Machan.

The Employer employs both shop and field employees. The Employer's shop is located at 46 Harriet Place, Lynbrook, New York. The record shows that at the time of the hearing, the Employer's employees were performing work at two jobsites, the Ritz Carlton jobsite, located at 4000 Royal Court, North Hills, New York, which was nearing completion, and the Garvies Point

³ The status of the Intervenor as a representative of the parties under 8(f) or 9(a) was not an issue presented at the hearing.

jobsite located at 350 Herb Hill Road, Glen Cove, New York. The Employer's service employees perform work at the Employer's jobsites and other locations in the field, as required.

Early Contact Between Petitioner and Employer

On about January 6, 2018, before the 2018-2020 contract was executed, the Petitioner's Director of Business Development/Head of Organizing, Hennison Phillips, met with the Employer owner Martayan "to see if he had an interest in doing business with Local 28." (Tr. 26) When Phillips met with the Employer, he did not have objective evidence that employees of the Employer supported the Petitioner.⁴ The specific content of the conversation between Phillips and the Employer's owner was not elicited at hearing.

The Employer Recognizes the Intervenor

Intervenor Business Agent Kevin Barry testified that he met with Etna employees in about August or September of 2018 and provided them copies of the Intervenor's pattern contract.⁵ The Employer recognized the Intervenor as the collective bargaining representative of the unit employees set forth in the 2018-2020 contract on about September 28, 2018.

October 2018 Bargaining Sessions

In October 2018, Intervenor Business Agent Kevin Barry engaged in about four bargaining sessions with the Employer's owner/president, Nelson Martayan, for an initial collective bargaining agreement. The Intervenor and the Employer did not engage in any discussions about a members only agreement.

According to Intervenor Business Agent Barry, at the time that the contract was negotiated, Warehouse, Production, Sales and Allied Service Employees, Local 811 ("Local 811") represented the Employer's shop employees who work in the Employer's facility located at 46 Harriet Place, Lynbrook, New York.⁶ The contractual unit negotiated by the Employer and the Intervenor did not include the Employer's shop employees.

⁴ Phillips testified that he never attempted to get employees of the Employer to sign authorization cards for the Petitioner and he did not ask employees of the Employer if they wanted to be represented by the Petitioner.

⁵ The testimony of Barry indicates that the "pattern" contract referred to herein was an Association agreement between the Intervenor and Long Island and New York Mechanical Contractors' Association. (Intervenor Exhibit No. 3)

⁶ Business Agent Barry testified that Local 811's President, Jose Merced, confirmed that Local 811 still represented the shop employees, even though Local 811 apparently had to "walk away from" other employees of the Employer that they previously represented. Barry's testimony indicates that upon the death of Merced, in about February or March of 2019, Local 811 stopped representing the Employer's shop employees. Former employee Vizcaino testified that he received a union card from Local 811 when he was working at the Ritz Carlton jobsite. Former employee Adam White, who worked in the Employer's shop on the fabrication of sheet metal, also testified that shop employees were represented by Local 811. In this regard, White's testimony shows that on an unknown date, he signed a membership card for Local 811, but he was told on April 1, 2019 (his last day working for the Employer) that Local 811 was no longer the employees' representative. (Tr. 159-160). White testified that no one from management told him that Local 811 was not the employees' representative.

Further, the Intervenor and the Employer negotiated the terms of the 2018-2020 agreement to be effective for a one-and-a-half-year duration with an understanding that the terms of the Intervenor's pattern contract (Intervenor Exhibit No. 3) would apply to the Employer's bargaining unit employees upon the expiration of the 2018-2020 agreement. In this connection, Barry testified that the Employer has signed an assumption agreement with the Intervenor effective as of June 1, 2020.

The November 1, 2018-May 31, 2020 contract

On November 1, 2018, the Employer and the Intervenor entered into the 2018-2020 contract. The Recognition and Coverage provision, Article 1 (2), states, "The Employer recognizes the Union as the duly authorized representative and exclusive bargaining agent for all sheet metal, piping and HVAC Service employees but excluding all employees performing work at the Ritz Carlton job located at 4000 Royal Court, North Hills, NY 11040." ⁷ (Board Exhibit No. 4). It is undisputed that the 2018-2020 contract was not negotiated to cover and does not cover the Employer's shop employees who work in the Employer's facility located at 46 Harriet Place, Lynbrook, New York. The Employer's shop employees include fabricators, i.e., employees engaged in the fabrication of sheet metal. Other classifications of employees working at the Employer's Lynbrook facility are not set forth in the record.

The contract includes, among other things, a Union security clause and provisions for check-off authorization, the adjustments of disputes, a United Welfare Fund – Welfare and Security Divisions, holidays, vacations, sick leave and minimum starting wages.

Manager Machan's Contact with Bargaining Unit Employees Related to the Intervenor

After the execution of the 2018-2020 contract, on dates in 2018 and 2019, the Employer's Human Resources Manager, CoraRose Machan provided paperwork to employees working at the Garvies Point jobsite and to employees working in the field so that they could sign up with the Intervenor and enroll in the Intervenor sponsored health insurance. Machan's testimony indicates that she gives unit employees membership enrollment forms when they work for the Employer for almost thirty days.⁸ In this regard, the testimony of employee Ronald Algarim indicates that in about November 2018, employees at the Garvies Point jobsite were called to the office to sign enrollment forms; however, he did not see them sign anything. Further, according to employee Diego Tejada, the Employer's Human Resources Manager, CoraRose Machan, came to the

⁷ With regard to the employees included in the contractual unit, Barry testified that the sheet metal workers install the duct work; the piping employees, i.e., steamfitters and plumbers, install the piping; and the HVAC service employees service the equipment, commission equipment, and do small installations. See below for further description of the unit employees work.

⁸ Her testimony also indicates that she gives employees forms for health, dental, and vision insurance sponsored by the Intervenor.

Garvies Point jobsite and gave Tejada and other employees (who were at the jobsite at the time and weren't members of the Intervenor) the paperwork to join the Intervenor.⁹

Intervenor's Conduct During Term of 2018-2020 Contract

After the contract was signed in November of 2018, Intervenor Business Agent Kevin Barry met with bargaining unit employees at Penn Station and a Chipotle restaurant. Thereafter, in about the end of February, Barry met with employees at the Garvies Point jobsite in Glen Cove, New York.¹⁰ Barry provided copies of his business card and the 2018-2020 contract to the employees at the meeting. Barry reviewed all the benefits set forth in the 2018-2020 contract. He explained to the employees that the duration of the 2018-2020 contract was one and a half years and that after it expired on May 31, 2020, they would receive the benefits of the full pattern contract, which included full paid medical, dental, and life insurance for them and their families at no cost to them. Barry also provided copies of the pattern contract to employees that day.

It is undisputed that prior to the filing of the instant petition, the Intervenor was not contacted by any bargaining unit members concerning complaints that they were not receiving contractual benefits.

According to the testimony of Business Agent Barry, the Intervenor was unaware of any claims that certain employees were not receiving contractual benefits until it received a copy of a letter from the Petitioner to the undersigned, dated March 29, 2019. (Intervenor Exhibit No. 1). The Petitioner's March 29, 2019 letter, among other things, stated that the Employer treated employees who had signed authorization cards for the Intervenor differently than other employees. Specifically, the letter indicated that in connection with the Presidents' Day holiday, only bargaining unit employees who had signed cards for the Intervenor received the day off with pay. The March 29, 2019 letter also stated that the Petitioner would be filing charges against the Employer for violating Sections 8(a)(1), (2) and (3) of the Act for its disparate treatment of employees based on their support for the Intervenor and asked that the charges block the processing of the instant petition pending an investigation as to whether the contract barred the holding of the petitioned-for representation election.

Upon receiving the Petitioner's March 29, 2019 letter, the Intervenor consulted with its attorney, who sent a grievance letter concerning the holiday pay issue, dated April 5, 2019 to the Employer. The Intervenor also met with the Employer in April on the grievance. The Intervenor requested a full list of employees and payroll records related to holiday pay. The Employer

⁹ Although he could not recall the exact date, Tejada's testimony indicates that Machan came to the jobsite with the paperwork for him to join the Intervenor about two weeks to a month after his February 5, 2019 start date at the Garvies Point jobsite and after Barry first visited the workers on the Garvies Point jobsite. Tejada also testified that he joined the Union in February 2019.

¹⁰ Sheet metal installer Tejada testified that this meeting took place in late February 2019. This was the first meeting between the Intervenor and bargaining unit employees that took place at the Garvies Point jobsite after the execution of the 2018-2020 contract. Former employee Vizcaino testified that he did not attend this meeting,

produced the payroll records indicating that there was no one who did not receive the holiday pay. Barry asserts that the grievance is ongoing, and the Employer is claiming that everyone has been paid.

Evidence Elicited on Issue of Members Only Agreement: Application of 2018-2020 contract

The Petitioner presented its Director of Business Development/Head of Organizing, Hennison Phillips, and four employee witnesses¹¹ in support of its assertion that the 2018-2020 contract is a members only agreement.

Director of Organizing Phillips testified that he has been told by unidentified “workers” that, “everyone is not getting the benefit” in accordance with the 2018-2020 contract.¹² Phillips testified that he did not discuss the benefit issue with the workers, and he did not ask which benefit(s) were not received. Phillips also testified that he never saw the 2018 to 2020 contract between the Intervenor and the Employer.

According to the Employer’s Human Resources Manager Machan, all bargaining unit employees receive contract benefits regardless of their union membership and that there is no members only agreement.

Health Insurance

The 2018-2020 contract provides for the Employer to make monthly contributions to the Welfare Fund for medical and hospitalization, dental and life insurance. According to the 2018-2020 contract, contributions for new employees commence not later than the first day of the month following sixty days from the date of hire, and eligibility for coverage is determined effective as of the first day of the month covered by such contribution. Similarly, the testimony of Business Agent Barry and HR Manager Machan indicates that under the 2018-2020 contract, employees are eligible for health insurance coverage sponsored by the Intervenor the first month after completing sixty days.¹³

¹¹ These four witnesses were Diego Tejada, Carlin Vizcaino, Ronald Algarim and Adam White. Tejada’s testimony indicates that he became a member of the Intervenor at the end of February 2019. Algarim testified that he did not sign an authorization card for the Intervenor. Algarim also testified that the office provided him with paperwork to obtain insurance sponsored by the Intervenor and that he signed that paperwork. Algarim did not specifically testify that he was a member of the Intervenor. Vizcaino’s testimony shows he did not become a member of the Intervenor. It is undisputed that White’s position, fabricator in the Employer’s Lynbrook, New York facility, is not included in the contractual unit. In its brief, the Petitioner also relies on the testimony of a fifth witness, Algenis Hernandez, who testified on the second day of hearing that he never received any benefits, including holiday pay for Presidents’ Day. Hernandez testified that he was never contacted by the Intervenor but did not testify about whether he was approached by the Employer with enrollment forms or if he was or was not a member of the Intervenor.

¹² Phillips’ testimony does not reveal when he was told this, which benefit was not received, or which employees did not receive the benefit.

¹³ Sheet metal installers who were working at the Ritz Carlton jobsite were specifically excluded from the contractual unit and did not receive the Intervenor sponsored health insurance.

Employee Ronald Algarim received the Intervenor's health insurance benefit after he was transferred to the Garvies Point jobsite. Employee Diego Tejada, who started working at Garvies Point on February 5, 2019, testified that he received the Intervenor's health insurance benefit in April 2019. Former employee Carlin Vizcaino testified that he did not recall receiving medical insurance while working for the Employer.¹⁴

Sheet metal mechanic Ronald Algarim testified that, on date(s) prior to the hearing,¹⁵ employee Patricio Cancino complained to him that he signed up for health insurance after he arrived at the Garvies Point jobsite in November 2018, and he still did not get the health insurance card.¹⁶ Cancino did not testify at the hearing. The Employer's Human Resources Manager CoraRose Machan testified that Cancino has been enrolled and the Employer has been paying for his health insurance every month since November 2018. Cancino did not tell Algarim that he called the Union to complain about not receiving his health insurance benefit. The record does not clearly establish Cancino's membership or non-membership in the Intervenor.

Holiday pay

With regard to holidays, Article 15 of the 2018-2020 contract, provides for nine holidays—New Year's Day, Presidents' Day, Memorial Day, Independence Day, Christmas Day, Labor Day, Veterans Day, Thanksgiving Day and Day After Thanksgiving.¹⁷ Thus, the holidays occurring after the effective date of the 2018-2020 contract, i.e., November 1, 2018, and before the hearing date were Veteran's Day, Thanksgiving Day, Day After Thanksgiving, Christmas Day, New Year's Day and Presidents' Day. There is no claim that the Employer did not equally apply the Holiday provision of the contract to all bargaining unit employees for any holiday except Presidents' Day, February 18, 2019. In this regard, former employees Carlin Vizcaino and Algenis Hernandez testified that they did not receive pay for the Presidents' Day holiday.¹⁸ Ronald Algarim testified that he received holiday pay in accordance with the 2018-2020 contract.¹⁹ It is also noted that employee Diego Tejada testified that he worked on the Presidents' Day holiday, but he could

¹⁴ Vizcaino previously worked for the Employer at the Ritz Carlton jobsite (employees working at the Ritz Carlton jobsite are specifically excluded from the Intervenor's contractual unit). Vizcaino started working at the Garvies Point jobsite on January 14, 2019 and he worked until February 24, 2019.

¹⁵ Algarim's testimony indicates that this conversation could have taken place about two or three months prior to the hearing and/or the morning before the hearing date. (Tr. 131, 151)

¹⁶ According to Algarim, who worked at the Garvies Point jobsite since September 2018, Cancino and other employees arrived at the Garvies Point jobsite in November 2018. Algarim initially indicated that these employees "signed" paperwork in November 2018, but he later testified that he was not sure when Cancino filled out the paperwork. Algarim's testimony does not indicate that he witnessed the employees sign paperwork to enroll in the Intervenor sponsored health insurance or to become a member of the Intervenor.

¹⁷ Additionally, Section b of the holiday provision provides that if any employee is called to work on any of the nine holidays, he shall receive, in addition to a full day's pay, pay at time and one-half for all work performed that day.

¹⁸ Vizcaino testified that he knew he was not paid for the holiday because he was not paid for the correct number of hours during the relevant pay period; however, Vizcaino did not recall the number of hours that he worked during the pay period. Both Vizcaino and Hernandez testified that they did not work on Presidents' Day.

¹⁹ Algarim testified that he did not sign an authorization card for the Intervenor. Algarim testified that he signed paperwork for insurance sponsored by the Intervenor and that Machan gave him that paperwork. He did not specifically testify that he was a member of the Intervenor.

not recall whether he was paid in accordance with the holiday provision of the 2018- 2020 contract.²⁰ Tejada's testimony indicates that he signed membership papers for the Intervenor after the Presidents' holiday.

Employer Human Resources Manager Machan testified that all bargaining unit employees, including Vizcaino and Hernandez, received holiday pay and the Employer's payroll document (Employer Exhibit No. 2), generated by its payroll service, shows that bargaining unit employees, including Vizcaino and Hernandez, received holiday pay during the payroll period which included Presidents' Day, i.e., February 11, 2019 - February 24, 2019.

The record shows that on about Friday, February 15, 2019, Project Manager William Rudden spoke to a group of employees at the Garvies Point jobsite, including Tejada and Vizcaino. Rudden testified that he told employees that Presidents' Day was a Union holiday, not an Etna holiday, and employees interpreted it on their own whether it was a holiday or not.²¹ According to Vizcaino, Rudden told the employees if they were members of the Intervenor it was optional for them to work on the Presidents' Day holiday and if they were not members they were required to work. According to employee Tejada, Rudden told the employees if they were not members of the Intervenor, they could not take off and be paid for the day. Tejada also testified that the employees did not know if they were going to get holiday pay or not if they showed up to work.

Wages

With regard to wages, the record evidence shows that the 2018-2020 contract sets minimum wage rates for different classifications of workers. While the contract sets forth a minimum, all bargaining unit employees who testified at the hearing received a higher rate than the minimum contractual rate. According to the testimony of CoraRose Machan, while the minimum wage rate is set by contract, employees can ask the owner for a raise and the owner will consider the request and determine whether a raise is appropriate for the employee's experience and background. Record evidence does not establish that any bargaining unit employees received less than the contractual minimum wage rate for their classification during the term of the contract or that any employee complained to the Intervenor about the Employer failing to pay him/her the contractual wage rate.

²⁰ Tejada testified that he did not recall whether he was paid for the holiday and that he could not say that he was not paid overtime for working on the holiday.

²¹ During his testimony, Rudden admitted that he did not know whether all of the employees would have the Presidents Day holiday off, so he asked HR Manager Machan. She told him it was not an Etna holiday, it was Union holiday. Rudden denied telling Tejada that he could not take off and be paid for the holiday. Rudden was asked specifically if he told a group of employees that they had to work in order to be paid for Presidents' Day; he responded again that he told the group of employees that it was a Union holiday, not an Etna holiday and he did not know how they interpreted what he said.

Bargaining unit employee Tejada testified that he had been classified as a helper and he was dissatisfied with this classification and his wage rate.²² Tejada testified that he never told the Employer or the Intervenor that he was dissatisfied with his wage rate. Tejada indicated that he received a raise only after he became a member of the Intervenor. In this regard, Tejada testified that although he did not know the date, he signed up to be a member of the Intervenor after Business Agent Barry came to the Garvies Point jobsite. Tejada testified that Barry came to the Garvies Point jobsite in the end of February 2019.

Employer Human Resources Manager Machan testified that Tejada was given the raise before he was approached with membership forms. The Employer's payroll document shows that Tejada was paid at the increased wage rate during the payroll period February 11 through February 24, 2019.

Vacations

The 2018-2020 contract, in Article 16, states:

All employees covered by this Agreement shall be eligible for paid vacations according to the following schedule with the length of an employee's continuous service being calculated from the anniversary date of hire.

One (1) year	–	One (1) week
Three (3) years	--	Two weeks
After Seven (7) years	--	Three weeks

Employee Ronald Algarim last took vacation in February 2018, prior to November 1, 2018 i.e., the effective date of the 2018-2020 contract.

Former employee Carlin Vizcaino testified that in about January 2019, after he started working at the Garvies Point jobsite, he had a family emergency and had to leave the country.²³ According to Vizcaino, he called the office and spoke to HR Manager Machan; he told her he had a family emergency and had to take off ten days to attend the funeral of his uncle. It is undisputed that he did not ask about using vacation time before leaving. Vizcaino testified that when he returned to the U.S., he wound up taking off an additional two days before returning to work. Sometime after Vizcaino returned to work, he asked Machan if he could use vacation time and be paid for the time that he took off. Machan told him that he could not get paid vacation because he failed to put in a request 30 days in advance and have the vacation approved before leaving. No

²² During a period before the 2018-2020 contract, i.e., February 2018 to April 2018, Tejada worked for the Employer as a helper at the Ritz Carlton jobsite. On February 5, 2019, after the parties entered into the 2018-2020 contract, Tejada began working for the Employer as a helper at the Garvies Point jobsite.

²³ Vizcaino's testimony indicates that this occurred in January 2019, after his January 14, 2019 start date at the Garvies Point jobsite.

one told Vizcaino that he was not qualified to receive vacation time because he had not worked for the Employer long enough.²⁴

According to Human Resources Manager Machan, Vizcaino was excused for his absence when he went to the Dominican Republic for a family emergency but he was not paid vacation pay because he did not request vacation leave in accordance with the Employer's policy.²⁵ In this regard, Machan testified that she spoke to Vizcaino after he already missed a day of work. Vizcaino told Machan that he would be gone for about ten days, maybe longer. Vizcaino was actually absent for about two and a half weeks. Vizcaino's cousin, employee Algenis Hernandez was also absent from work due to the same family emergency. About two weeks after Vizcaino returned to work, after the payroll was done, Hernandez asked Machan if he and Vizcaino could use vacation time and get paid for the time that they were absent. Machan denied the request as Hernandez and Vizcaino did not comply with the Employer's policy.²⁶

Former employee Hernandez' brief testimony on this topic indicates that he was absent from work for two weeks and that he was not paid. Hernandez does not dispute Machan's testimony.

Sick Leave

The 2018-2020 contract provides, in Article 19(a), "All employees covered by this Agreement, who have one (1) year seniority shall be entitled to five (5) days sick leave per year." Further, Article 19(b) provides, "All employees with less than one (1) year seniority shall, after their ninth (9th) month of employ with a covered employer, receive one (1) day paid sick leave. Such employee shall receive an additional day of paid sick leave in their twelfth (12th) month of employ with their employer."

Former employee Carlin Vizcaino did not receive paid sick days. Vizcaino testified that he has been absent from work, but it would not be a sick day, inasmuch as the Employer was supposed to provide paid sick leave after a "certain time" passed.²⁷ Vizcaino also testified that he did not take any sick days where he was absent from work because he was sick. And, he testified that he never asked to take sick leave or get paid sick leave. However, Vizcaino also testified that he called in sick on Presidents' Day and that he did not receive sick pay or holiday pay for the day.

²⁴ Vizcaino testified that he worked at the Garvies Point jobsite from January 14, 2019 to February 24, 2019. He also testified that he did not work for the Employer for a year; the Petitioner contends that the Employer engaged in conduct which was the subject of a previous unfair labor practice charge which caused a break in Vizcaino's employment. However, the evidence does not show that the Employer refused him vacation pay because he did not have one year of continuous service.

²⁵ Machan testified that she called Vizcaino because he missed a day of work. Vizcaino provided Machan verification of a one-way flight to the Dominican Republic.

²⁶ In addition to the failure to provide 30 days advance notice and have the vacation approved before leaving, Machan also referred to their chronic absenteeism.

²⁷ It appears Vizcaino may have been referring to the Employer's policy of sick leave accrual as described by Machan's testimony (set forth below).

Employee Ronald Algarim received paid sick leave in 2019. Former employee Algenis Hernandez's testimony indicates that he never received any paid sick days; the evidence does not indicate the dates that he was out sick or show whether he called in sick on those dates.

According to Human Resources Manager Machan, in order to receive sick pay, employees must call in sick to notify the Employer of the absence. If an employee is a no-call no-show, they cannot use sick leave. Additionally, sick leave is accrued at a rate of about one day every two months. Employees cannot use all of their sick leave in the first month.

Evidence Elicited Concerning Bargaining Unit

All employees in the contractual bargaining unit work in the field at construction jobsites or customer locations rather than in the Employer's Lynbrook, New York shop. The Employer and the Intervenor have agreed in the 2018-2020 contract to certain terms and conditions of employment for all bargaining unit employees. None of the positions are required to be licensed. All bargaining unit employees receive OSHA training. Hiring of all bargaining unit employees is through the Employer's owner and its Human Resources Manager. The Project Manager of the Garvies Point jobsite, William Rudden, has many years of experience running a full sheet metal shop which included performing service, sheet metal, piping and insulation work. As Project Manager of the Garvies Point jobsite, Rudden supervises the work of bargaining unit employees when they are assigned full-time to the jobsite. According to Rudden, he requires all employees working at the jobsite to attend a morning "tool box talk"/safety meeting with him to discuss the day's work where employees are required to sign a safety form. Rudden calls the main office when he requires additional employees to perform work at the jobsite. The dispatcher, Charles Heerbrandt, assigns service employees their daily work if they are not already assigned to a jobsite.

Sheet metal employees

Sheet metal installers/mechanics install the sheet metal duct work, fans and condenser curbs. Insulators/insulation specialists wrap the sheet metal duct work with insulation. The record indicates that former employee Vizcaino performed both sheet metal installation and insulation work for the Employer. Sheet metal employees also assist HVAC service employees on a jobsite when a newly installed system is not working properly and needs to be fixed; in other circumstances, a sheet metal employee may also work with an HVAC service employee to disconnect an existing HVAC unit.

All bargaining unit sheet metal employees perform their work on jobsites, currently the Garvies Point jobsite. They work 7:00 a.m. to 3:30 p.m. from Monday through Friday on the jobsite.

Sheet metal installers participated in training for advanced commercial HVAC systems with the HVAC service employees.

Piping employees

Piping employees, also referred to as steamfitters and pipefitters, install, connect and repair the piping required for HVAC systems. They work at construction jobsites or in the field on service calls. According to the testimony of HR Manager Machan, these employees primarily work on jobsites, but they also do service work. Machan estimated that 60 percent of their work time is on the jobsite and 40 percent of their work time is spent performing service work.

According to Project Manager Rudden, two steamfitters and 6 refrigeration pipefitters are currently assigned full time to the Garvies Point jobsite under his supervision. They work 7:00 a.m. to 3:30 p.m. from Monday through Friday. Many steamfitters have EPA training and take specific training geared towards certain equipment.

HVAC Service employees

HVAC service employees service and commission HVAC equipment and do small installations. They work on jobsites and on service calls in the field. They work Monday through Friday from 8:00 a.m. to 4:30 p.m. When working on a jobsite for a full day, they work 7:00 a.m. to 3:30 p.m. They can also work for part of the day on a jobsite and part of the day in the field on service calls.

HVAC service employees perform HVAC work on the jobsite and service calls in the field. On the jobsite, they work with sheet metal workers. About half of the HVAC service employees primarily perform service work in the field but also work on the jobsite with sheet metal workers. Indeed, there is testimony that HVAC service employee Chance Brown works about two days of the week on jobsites with sheet metal installers. The HVAC service employees are not usually on the jobsite for the whole day; they also perform service calls in the field. At the time of the hearing there were only a couple of occasions when service employees came to the Garvies Point jobsite; once the main electric power is installed, the service employees will be on the Garvies Point jobsite to troubleshoot issues with the HVAC system.

Discussion:

Contract Bar – Members Only Issue

The Petitioner contends that the 2018-2020 contract does not operate as a bar to the processing of the instant petition because it is a members only contract, which applied only to unit employees who were members of the Intervenor.

In establishing the contract bar doctrine, the Board has attempted to strike a balance between preserving employees' right to freely choose their representative and preserving some stability in the parties' collective bargaining relationship. This doctrine provides that when the contracting parties have executed a collective-bargaining agreement, they are entitled to a

reasonable period of stability in their relationship without interruption. *General Cable Corp.*, 139 NLRB 1123 (1962).

In order for a contract to bar an election, it must conform to certain standards.²⁸ It is well established that a contract for members only does not afford the kind of representation nor establish the type of collective bargaining unit which the Act contemplates and consequently, the Board will not accord contract-bar quality to it. *Ron Wiscombe Painting & Sandblasting Co.*, 194 NLRB 907 (1972); *Appalachian Shale*, *supra*. Indeed, the Board has held that an incumbent union will not retain a presumption of majority support within a unit if the unit lacked clarity or the parties administered their contract on a members-only basis. *Arthur Sarnow Candy Co., Inc.*, 306 NLRB 213 (1992); *Brower's Moving & Storage*, 297 NLRB 207, 208 (1989); *Ace Doran Hauling & Rigging Co.*, 171 NLRB 645 (1968). In *Brower's Moving & Storage*, *supra*, the Board stated:

...[I]t is well established in Board law that an incumbent union generally enjoys a presumption of continued majority status during the term of a collective-bargaining agreement. In *Ace-Doran Hauling & Rigging Co.*, *supra*, the Board found a narrow exception to that general rule when two factors undermined the validity of the contract and the presumption of majority status. First, the Board found that the unit was not defined with sufficient clarity 'to warrant a finding that the contracts are ones to which a presumption of majority status can attach.' (citation omitted). Second, the Board found that both parties' practice under the agreements showed that the parties did not intend them to be effective collective-bargaining agreements, but merely arrangements to check off dues and to procure benefits for union members only. (citation omitted). Similarly, in *Bender Ship Repair Co.*, 188 NLRB 615, 615 (1971), the Board found a "patent ambiguity" in the contractual unit definition and that the union acquiesced in the application of the contract to only a few favored employees. *Id.* at 616. In *McDonald's Drive-In Restaurant*, 204 NLRB 299, 309 (1973), the Board adopted the judge's finding that the unit purported to be covered by the contract was ambiguous and that the union never bothered to enforce its contract.

In representation cases where contract language is ambiguous on its face as to whether the contract was designed as a members only contract, or was intended to accord the union the status of an exclusive bargaining agent with the substantive provisions of the contract made applicable to all employees regardless of their membership or nonmembership in the union, the Board has consistently held that the ambiguity should be resolved by looking to the intent and practice of the

²⁸ See *Appalachian Shale Products Co.*, 121 NLRB 1160, 1161 (1958). In *Appalachian Shale*, the Board considered its policies on the adequacy of a contract for contract bar purposes and held that to constitute a bar the agreement must be written, signed, contain terms sufficient to stabilize the collective-bargaining relationship, and cover an appropriate unit encompassing employees sought in the representation petition.

contracting parties as manifested by external evidence.²⁹ The Board has also held that where a contract has been applied on a members only basis and the intervenor has never in fact represented all the employees equally and without discrimination between union and nonunion members, it cannot serve as a bar to the processing of a representation petition, regardless of whether the contract purported to cover all employees.³⁰

Here, the recognition clause of the 2018-2020 contract clearly describes the unit as “all sheet metal, piping and HVAC Service employees but excluding all employees performing work at the Ritz Carlton job located at 4000 Royal Court, North Hills, NY 11040.”³¹ The Petitioner does not point to, nor do I find, any express evidence of a members only agreement in the recognition clause or the substantive provisions of the 2018-2020 contract. However, in making a determination as to whether the 2018-2020 contract extended only to members, the express language of the recognition clause and substantive provisions, while significant, is not always dispositive. In this regard, I consider the record evidence in connection with the parties’ practice under the 2018-2020 contract.

The record contains uncontroverted testimony by Intervenor Business Agent Kevin Barry, who engaged in the 2018-2020 contract negotiations with the Employer, that the Intervenor and the Employer did not design a members only agreement. Record evidence shows that after the November 1, 2018 execution of the contract, Barry met with employees in the field, including at the Garvies Point jobsite. Specifically, in about the end of February 2019, Barry met with bargaining unit employees at the Garvies Point jobsite, provided copies of the 2018-2020 contract

²⁹ *Hebron Brick*, 135 NLRB 245 (1962) (where an indeterminate reference to union members in the recognition clause created ambiguity as to the intended coverage of the contract, the ambiguity was resolved by considering the intent and practice of the parties); *Post Houses, Inc.*, 173 NLRB 1320 (1968) (where the Board resolved the use of the phrase “employees desiring to join said Union” in the recognition clause by considering extrinsic evidence that the parties did not intend a members only contract).

³⁰ See *Cargo Packers Incorporated*, 109 NLRB 1184, 1185 (1954) (where there was no general recognition clause and certain provisions of the contract related solely to members of the union, the employer among other things, failed to provide 18 employees who had employment in excess of six months paid vacation, and did not pay into the welfare fund on their behalf or pay them the minimum wage specified in the contract, the Board held that regardless of whether the contract purported to cover all employees, it had been applied on a members only basis, was a members only contract and did not bar proceeding on the petition); *N. Summergrade & Sons*, 121 NLRB 667 (1958) (where the petitioner contended that the disputed agreement was, on its face, a members only contract, the employer admitted that it made welfare fund contributions only for its employees who were members of the intervenor, and the intervenor made no attempt to require the employer to make welfare fund payments for all employees covered by the contract until after a decertification petition was filed, the Board found that the contract alleged to be a bar had not been equally applied to all employees and regardless of whether the contract purports on its face to cover all employees and it could not serve as a bar to the proceeding).

³¹ At the hearing the Petitioner indicated that the exclusion of the Employer’s employees performing work at the Ritz Carlton jobsite (who had previously been represented by Local 811) was part of its evidence of a members only agreement; however such exclusion on the face of the contract does not indicate that the contract was not equally applied to all bargaining unit employees. Further, the record shows that at the time of the hearing, the Ritz Carlton job was to be completed within two weeks and the Employer no longer employed any of the petitioned-for employees at that jobsite. In fact, the remaining employees at the Ritz Carlton jobsite, i.e., insulators and piping employees, are excluded from the Petitioner’s unit. The Petitioner does not contend that the exclusion of the remaining employees at the Ritz Carlton jobsite renders the contractual unit inappropriate.

to them, explained the benefits under the contract and gave employees his business card with information on how to contact him. Further, during the term of the contract, on dates in 2018 and 2019, Employer Human Resources Manager CoraRose Machan provided paperwork to employees working at the Garvies Point jobsite and to employees in the field so that they could sign up with the Intervenor and enroll in the Intervenor sponsored health insurance. Thus, the evidence does not establish that the parties to the 2018-2020 agreement failed to advise employees that they were represented by the Intervenor or that the employees were denied knowledge necessary to seek assistance from the Intervenor.³²

I have considered the testimony of the Petitioner's witnesses in support of the its claim that the Employer excluded some bargaining unit members from receiving benefits under the contract. However, I find that there is insufficient record evidence to establish that the contract was intended to be applied and applied differently to members and nonmembers. In this regard, concerning the testimony of the Petitioner's Director of Business Development/Head of Organizing Phillips, that unidentified "workers" indicated to him that contract benefits were not provided to everyone, the record does not establish which employees allegedly did not receive benefits. Nor does the record establish that Phillips himself had any direct conversation with employees covered under the 2018-2020 contract regarding their non-receipt of contractual benefits. Indeed, Phillips admits that he did not see the 2018-2020 contract and thus, he would not know who was covered under the contract or the benefits provided thereunder. With regard to the Employer's practice related to the health insurance benefit, record evidence indicates that the contractual eligibility period for new employees was applied to employees Tejada and Vizcaino. More specifically, the record indicates that Tejada started working at the Garvies Point jobsite on February 5, 2019 and received the benefit in about April 2019, after completing the 60-day period referred to in the contract. Vizcaino started working at the Garvies Point jobsite on January 14, 2019 and was laid off on February 24, 2019, before completing 60 days. Thus, it appears that the timing of the welfare benefit was tied to the 60-day period set forth in the contract rather than their status as a member or nonmember. And, while employee Ronald Algarim provided hearsay evidence that employee Patricio Cancino did not receive his health insurance card/benefit, there is uncontroverted evidence from HR Manager Machan that Cancino has been enrolled and the Employer has been paying for his health insurance benefit on a monthly basis since November 2018.³³ With regard to the Employer's practice in connection with wages, there is no evidence that the Employer failed to comply with the wage provision of the 2018-2020 contract. Further, with regard to the Petitioner's claim that Tejada did not receive a wage increase until after he became a member of the Intervenor, while Tejada could not recall the date he became a member of the Intervenor, record evidence, including the Employer's payroll document showing that his wage increase was in effect during

³² It is noted that while nonmember Vizcaino was not present at the meeting between Barry and the employees at the Garvies Point jobsite, he admits that he knew the Intervenor represented employees on the jobsite. Vizcaino testified that "they" told employees that the Intervenor was going to come to speak with employees and that he was waiting for that. (Tr. 94).

³³ Cancino's membership status in the Intervenor is not clearly established by record evidence.

the payroll period covering February 11 to 24, 2019, and the testimony of Human Resources Manager Machan that Tejada was given the raise before he was approached with membership forms to join the Intervenor, in combination with Tejada's testimony that he signed up to join the Intervenor after Barry's end of February 2019 visit to the Garvies Point jobsite, indicates that Tejada received a wage increase prior to his becoming a member of the Intervenor. With regard to the holiday benefit for President's Day, the Employer's payroll document shows that all employees received the holiday benefit in accordance with the 2018-2020 contract. While there is evidence that Project Manager Rudden left nonmember bargaining unit employees who were part of a group meeting unsure of whether they would be paid for the Presidents' Day holiday, his statement that Presidents' Day was a Union holiday and not an Etna holiday, was ambiguous and does not establish the existence of a members only contract. Even assuming Rudden told the group of employees that if they were not members of the Intervenor, they could not take off and be paid for the holiday, Rudden was clearly indicating his subjective understanding of a "Union holiday." Further, the documentary evidence shows that all employees were provided the holiday benefit, supporting the view that a members only relationship was not intended and does not exist. Finally, with regard to vacation pay and sick leave, Employer policies were followed in its decisions not to provide paid vacation to Vizcaino and Hernandez,³⁴ and while Vizcaino testified that he called in sick on Presidents Day, February 18, 2019, the Employer's payroll document in evidence shows that he was paid for the Presidents' Day holiday.³⁵ Accordingly, I find that the record is insufficient to establish that the contract was not equally applied to all employees.

Further, there is no evidence that any employee complained to the Intervenor about nonreceipt of any benefit under the contract or reported any other grievance to the Intervenor. It is undisputed that the Intervenor was not aware of any claims that certain employees were not receiving contractual benefits until it received a copy of the Petitioner's March 29, 2019 letter addressed to the undersigned concerning allegations that the Employer only provided Presidents' Day off with pay to employees who signed authorization cards for the Intervenor. Upon receipt of the March 29, 2019 letter, the Intervenor filed a grievance with the Employer concerning the holiday pay issue, met with the Employer and requested and received payroll records from the Employer substantiating its claim that it paid all unit employees holiday pay for Presidents' Day. There is no evidence that the Intervenor told any of the bargaining unit employees that the terms of the 2018-2020 contract did not apply to them. Nor does the evidence establish that the Intervenor failed to represent all employees equally and without discrimination between union and nonunion members.

In view of the foregoing, I find that there is insufficient record evidence to establish that the 2018-2020 contract is a members only agreement that applies only to unit employees who were

³⁴ Hernandez' membership status in the Intervenor is not clearly established by record evidence.

³⁵ There is no evidence that an employee is entitled under the contract to receive both holiday pay and sick pay for the same calendar day.

members of the Intervenor.³⁶ In the circumstances herein, consideration of the language of the contract and the parties' practice in administering the contract does not establish that the presumption of majority support should not apply.³⁷ Thus, the 2018-2020 contract is not removed as a bar on such grounds.³⁸

Additional Contract Bar Issue -Appropriateness of Contractual Unit

The Petitioner also argues that the 2018-2020 contract should not serve as a bar to these proceedings because the contractual unit is different than the petitioned-for unit in that it includes the Employer's service employees,³⁹ who are not within the jurisdiction of the Petitioner.⁴⁰ It is well-settled that there is more than one way in which employees of a given employer may be appropriately grouped for purposes of collective bargaining.⁴¹ Thus, the contractual unit does not have to be the most appropriate unit, it only has to be *an* appropriate unit. In this regard, it is noted that the Board is reluctant to disturb a contract unit established as a result of collective bargaining and desires to give recognition and weight to a satisfactory bargaining history effectively evincing the intent of the parties unless the unit is repugnant to Board policy. Here, while the brief bargaining history between the Employer and the Intervenor is not controlling, it is a factor to be considered. The service employees have a significant function in the Employer's HVAC projects. They are part of a functionally integrated process by which the Employer performs its business. The service employees spend their time working in the field, at customers' locations or at construction jobsites, similar to the sheet metal employees who spend their time working in the field at the jobsite. And, there is record testimony that the Employer's service employees interact with the sheet metal employees on jobsites in the ordinary course of the Employer's business.⁴² The service employees and other bargaining unit employees receive the same benefits, work under the same terms and conditions of employment set forth in the 2018-2020 contract and are subject to the same Employer policies. Additionally, other factors, including the centralized control of

³⁶ Compare *Cargo Packers Incorporated*, 109 NLRB 1184, 1185 (1954); *N. Summergrade & Sons*, 121 NLRB 667 (1958).

³⁷ See e.g., *A & M Trucking Inc.*, 314 NLRB 991 (1994) (where, contrary to the judge's findings of a members only contract and application, the Board found there was no evidence that the contract, on its face or in its application, covered only union members); *Brower's Moving & Storage*, 297 NLRB 207 (1989) (where there was no members only contract and no evidence that the union ever acquiesced in a repudiation of substantial portions of the contract or that the union and the employer ever had an arrangement or understanding that would negate an intent to enter into a valid collective-bargaining relationship, the Board held that the contract gave rise to an irrebuttable presumption of majority status).

³⁸ See e.g., *Hebron Brick*, 135 NLRB 245 (1962) (where intent and practice of the contracting parties established that the contract was not a members only agreement, and it was not removed as a bar).

³⁹ As indicated above, the Employer's piping employees and HVAC service employees can perform service work and are referred to as service employees at times on the record.

⁴⁰ In this regard the Petitioner's written offer of proof points to a decision of the Executive Committee of the Building and Construction Trades Council of Greater New York finding that insulation and certain maintenance of sheet metal duct work was within the jurisdiction of a union other than the Petitioner. Thus, the petitioned-for unit does not include insulators or service employees covered by the contractual unit.

⁴¹ *Overnite Transportation Co.*, 322 NLRB 723 (1996); *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988).

⁴² I recognize that there is testimony from two former employees that they did not work with service employees. However, the record also contains evidence that there is interaction between service and sheet metal employees.

labor relations, that the service employees work the same work week, attend some of the same trainings,⁴³ and are subject to the same supervision when assigned full time to a jobsite, indicate that the service employees share a community of interest with the sheet metal employees.⁴⁴ Accordingly, considering the above factors, I find that the existing contractual unit is appropriate for contract bar purposes.

Petitioned-for Fabricators

As noted above, at the time the 2018-2020 contract was negotiated and executed, the Employer's shop employees working at its Lynbrook facility were represented by Local 811 and thus were not included in the contractual bargaining unit of employees represented by the Intervenor. It is undisputed that since February or March of 2019, Local 811 no longer represents any employees of the Employer.⁴⁵ The petitioned-for fabricators are among the Employer's shop employees.

Thus, the contractual bargaining unit encompasses the petitioned-for unit with the exception of the fabricators working in the Employer's shop. Accordingly, the contract does not serve as a bar to an election among the shop employees, including the petitioned-for fabricators. However, the Petitioner has not indicated a desire to proceed to an election in a unit other than the petitioned-for unit, and the record does not contain sufficient evidence about the shop employees to direct an election in a unit of these employees. Accordingly, I do not direct an election in a unit of shop employees who are not encompassed by the contractual bargaining unit.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this proceeding, the undersigned finds and concludes as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.
2. The parties stipulated that the Employer is an employer engaged in commerce within the meaning of the Act and is subject to the jurisdiction of the Board.

⁴³ For example, the record shows that the sheet metal workers and the service employees were trained on an advanced HVAC system. All bargaining unit employees attend OSHA training.

⁴⁴ I also note that the jurisdictional limitations on the Petitioner do not render the contractual bargaining unit inappropriate.

⁴⁵ There is no contention and I do not find that the contractual unit is rendered inappropriate due to the non-inclusion of shop employees. In this regard, the shop employees perform their work at a separate facility, the Employer's Lynbrook, New York shop, under separate terms and conditions of employment.

The parties also stipulated that the Employer is a New York corporation with an office and place of business located at 46 Harriet Place, Lynbrook, New York 11563 and is engaged in the construction business including sheet metal, piping and HVAC work. Annually, in the course and conduct of its business operations, the Employer purchases, and receives at its New York facility, goods valued in excess of \$50,000 directly from suppliers located outside the State of New York.

Based on the parties' stipulation and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I hereby find, that the Petitioner and the Intervenor are labor organizations as defined in Section 2(5) of the Act. Both labor organizations claim to represent certain employees of the Employer.

4. The following employees constitute a unit appropriate for the purposes of the application of the contract bar doctrine:

All sheet metal, piping and HVAC Service employees but excluding all employees performing work at the Ritz Carlton job located at 4000 Royal Court, North Hills, NY 11040, guards and supervisors as defined in the Act.

5. As discussed above, I have found that the Intervenor's collective bargaining agreement covering the bargaining unit set forth in paragraph 4 above, bars an election among such employees at this time. No question concerning commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

ORDER

Accordingly, and inasmuch as there is insufficient record evidence in connection with the Employer's unrepresented shop employees and the Petitioner has not indicated a desire to proceed to an election in an alternative unit, it is hereby ordered that the petition in Case No. 29-RC-235555 be, and it hereby is, dismissed.

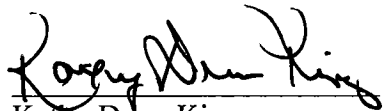
RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by **September 11, 2019**.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review

should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated, the 28th day of August 2019.

A handwritten signature in black ink, appearing to read "Kathy Drew King". The signature is written in a cursive, flowing style.

Kathy Drew King
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RD PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 18-RD-235785	Date Filed February 12, 2019

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer Cemstone Concrete Materials, LLC		2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) 2025 Centre Pointe Blvd, Ste 300, Mendota Heights, MN 55120	
3a. Employer Representative - Name and Title Lia Draxler, Human Resources		3b. Address (If same as 2b - state same) SAME AS ABOVE	
3c. Tel. No. (651)686-4259	3d. Cell No.	3e. Fax No.	3f. E-Mail Address ldraxler@cemstone.com
4a. Type of Establishment (Factory, mine, wholesaler, etc.) Construction		4b. Principal product or service Concrete	5a. City and State where unit is located: Mendota Heights, IA
5b. Description of Unit Involved Included: All mixer drivers, mechanics and maintenance employees. Excluded: All guards and supervisors, as defined by the Act, and all other employees.			6a. No. of Employees in Unit: 31 6b. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

Check One: ☐ 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about _____ (Date) (If no reply received, so state).

☒ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent Laborers' International Union of North America, Local Union 177		8b. Address 3400 E Euclid Ave, Suite A, Des Moines, IA 50317	
8c. Tel. No. (515)265-2558	8d. Cell No.	8e. Fax No.	8f. E-Mail Address brians@laborers177.com
8g. Affiliation, if any		8h. Date of Recognition or Certification	8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year) March 1, 2019 March 31 2019

9. Is there now a strike or picketing at the Employer's establishment(s) involved? ☐ If so, approximately how many employees are participating? _____ (Name of labor organization) _____ has picketed the Employer since (Month, Day, Year) _____

10. Organizations or individuals other than those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)

10a. Name	10b. Address	10c. Tel. No.	10d. Cell No.
		10e. Fax No.	10f. E-Mail Address
11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.		11a. Election Type: <input type="checkbox"/> Manual <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail	
11b. Election Date(s):	11c. Election Time(s):	11d. Election Location(s):	

12a. Full Name of Petitioner (b) (6), (b) (7)(C)	12b. Address (street and number, city, state, and ZIP code) (b) (6), (b) (7)(C)
---	--

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state)

12d. Tel. No. (b) (6), (b) (7)(C)	12e. Cell No. (b) (6), (b) (7)(C)	12f. Fax No.	12g. E-Mail Address (b) (6), (b) (7)(C)
13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.			
13a. Name and Title (b) (6), (b) (7)(C)		13b. Address (street and number, city, state, and ZIP code) SAME AS ABOVE	
13c. Tel. No. SAME AS ABOVE	13d. Cell No. SAME AS ABOVE	13e. Fax No. SAME AS ABOVE	13f. E-Mail Address SAME AS ABOVE

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name/Print (b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	ate 2/24/19
-----------------------------------	---------------------	---------------------	----------------

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

(b) (6), (b) (7)(C)



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 18
Federal Office Building
212 Third Avenue South, Suite 200
Minneapolis, MN 55401-2657

Agency Website: www.nlrb.gov
Telephone: (612)348-1757
Fax: (612)348-1785

February 14, 2019

PHYLLIS KARASOV, ATTORNEY
LARKIN HOFFMAN DALY & LINDGREN LTD
8300 NORMAN CENTER DR STE 1000
MINNEAPOLIS, MN 55437-1060

Re: Cemstone Concrete Materials, LLC
Case 18-RD-235785

Dear Ms. Karasov:

This is to advise you that the Petitioner's request to withdraw the petition in the above case has been approved.

The Notice of Hearing previously issued in this matter is withdrawn and the hearing is canceled.

Very truly yours,

/s/ Jennifer A. Hadsall

JENNIFER A. HADSALL
Regional Director


cc: LIA DRAXLER, HUMAN RESOURCES
CEMSTONE CONCRETE MATERIALS, LLC
2025 CENTRE POINTE BLVD STE 300
MENDOTA HEIGHTS, MN 55120-1221

BRIAN SPRING, ORG.
LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL UNION 177
3400 E EUCLID AVE, SUITE A
DES MOINES, IA 50317

BRANDON E. WOOD, ATTORNEY
BLAKE & UHLIG, P.A.
753 STATE AVENUE, SUITE 475
KANSAS CITY, KS 66101-2510

MICHAEL E. AMASH, ATTORNEY
BLAKE & UHLIG, P.A.
753 STATE AVENUE, SUITE 475
KANSAS CITY, KS 66101-2510

(b) (6), (b) (7)(C)

A large black rectangular redaction box covers the text in this block.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

RD PETITION

DO NOT WRITE IN THIS SPACE

Case No.
25-RD-237358

Date Filed
3/8/19

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RD- DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. **The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.**

2a. Name of Employer Darling Ingredients, Inc.		2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) 202 Bengston Street IL Lynn Center 61262-	
3a. Employer Representative - Name and Title Joseph M Czolgosz General Manager		3b. Address (If same as 2b - state same) 202 Bengston Street IL Lynn Center 61262-	
3c. Tel. No. (309) 476-8111	3d. Cell No. (309) 476-8129	3e. Fax No.	3f. E-Mail Address jczolgosz@darlingii.com
4a. Type of Establishment (Factory, mine, wholesaler, etc) O hers		4b. Principal product or service Blended meat and bone meal	
5b. Description of Unit Involved Included: See Attached Page 2 for additional details Excluded: See Attached Page 2 for additional details		5a. City and State where unit is located: Lynn Center. IL	
		6a. No. of Employees in Unit: 7	
		6b. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

Check One: ☐ **7a.** Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about _____ (Date) (If no reply received, so state).
☐ **7b.** Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent Teamsters Local 371 Daniel Barry		8b. Address 101 31st Avenue IL Rock Island 61201-	
8c. Tel No. (309) 787-4456	8d Cell No. (563) 340-0503	8e. Fax No. (309) 787-4888	8f. E-Mail Address
8g. Affiliation, if any Inetrnational brotherhood of teamsters		8h. Date of Recognition or Certification 05/01/2016	
		8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year) 04/30/2019	

9. Is there now a strike or picketing at the Employer's establishment(s) involved? No _____. If so, approximately how many employees are participating? _____.
(Name of labor organization) _____, has picketed the Employer since (Month, Day, Year) _____.

10. Organizations or individuals other than those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)

10a. Name	10b. Address	10c. Tel. No.	10d. Cell No.
		10e. Fax No.	10f. E-Mail Address
11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election. 11b. Election Date(s): any 11c. Election Time(s): any		11a. Election Type: <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail 11d. Election Location(s): any	
12a. Full Name of Petitioner (b) (6), (b) (7)(C)		12b. Address (street and number, city, state, and ZIP code) (b) (6), (b) (7)(C)	

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state) IL Kewanee 61443-_____
Teamsters Local 371

12d. Tel No. (b) (6), (b) (7)(C)	12e. Cell No.	12f. Fax No.	12g. E-Mail Address (b) (6), (b) (7)(C)
--	----------------------	---------------------	---

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title		13b. Address (street and number, city, state, and ZIP code)	
13c. Tel No.	13d. Cell No.	13e. Fax No.	13f. E-Mail Address

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print) (b) (6), (b) (7)(C)	Signature (b) (6), (b) (7)(C)	Title	Date 02/27/2019 19:34:15
--	---	--------------	------------------------------------

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Attachment

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

Employees Included
Laborers

Employees Excluded
Clerical, supervisory, interns, temporary employees, and non-working foremen



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SUBREGION 33
101 SW Adams St
Suite 400
Peoria, IL 61602

Agency Website: www.nlrb.gov
Telephone: (309)671-7080
Fax: (309)671-7095

April 5, 2019

(b) (6), (b) (7)(C)

Re: Darling Ingredients, Inc.
Case 25-RD-237358

Dear (b) (6), (b) (7)(C)

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

Decision to Dismiss: On March 18, 2019, the Regional Director issued an Order Indefinitely Postponing Hearing and Order to Show Cause Why Petition Should Not Be Dismissed based on facts obtained during the initial investigation which indicated that your petition was not timely filed. No party filed a response to the Order to Show Case. As such, no cause has been shown why the petition should not be dismissed.

The investigation into your petition established that the employees involved in the instant petition are covered by a collective bargaining agreement between Darling Ingredients, Inc. (Employer) and the International Brotherhood of Teamsters, Local 371 (Union), which is effective from May 1, 2016 through and including April 30, 2019. The Board has held that a collective bargaining agreement of three years or less in duration bars the processing of a petition which is not filed more than 60 days but less than 90 days before the expiration date of the contract. *Leonard Wholesale Meats*, 136 NLRB 1000 (1962). Since your filing of the petition and accompanying documentation required by the Board's Rules and Regulations was not completed until March 8, 2019, your petition was not filed during the 60 to 90 day period preceding the expiration of the collective bargaining agreement. As such, the status of the Union as the employees' bargaining representative cannot be challenged at this time and I am dismissing the petition in this matter.

Right to Request Review: Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.

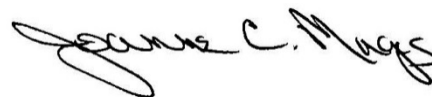
Procedures for Filing Request for Review: A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **April 19, 2019**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on April 19, 2019**.

Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,



JOANNE C. MAGES
Acting Regional Director

cc: Office of the Executive Secretary (by e-mail)

Daniel Barry, Business Agent
Teamsters Local 371
101 31st Ave
Rock Island, IL 61201-5916

N. Elizabeth Reynolds, Attorney
Allison, Slutsky & Kennedy, P.C.
230 W Monroe St Ste 2600
Chicago, IL 60606-4969

Joseph M Czolgosz, General Manager
Darling Ingredients, Inc.
202 Bengston Street
Lynn Center, IL 61262

Matthew D. Hamm, Attorney
4221 Alexandria Pike
Cold Spring, KY 41076

Thomas V. Walsh, ESQ.
Jackson Lewis P.C.
44 S. Broadway
14th Floor
White Plains, NY 10601-2329

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
PETITION

FORM EXEMPT UNDER 44 U.S.C.

DO NOT WRITE IN THIS SPACE

Case No.
25-RD-238741Date Filed
3/29/19

INSTRUCTIONS: Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

1. PURPOSE OF THIS PETITION (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)
- ☐ RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- ☐ RM-REPRESENTATION (EMPLOYER PETITION) - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- ☒ RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- ☐ UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES) - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- ☐ UC-UNIT CLARIFICATION - A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees: (Check one) ☐ In unit not previously certified. ☐ In unit previously certified in Case No. _____
- ☐ AC-AMENDMENT OF CERTIFICATION - Petitioner seeks amendment of certification issued in Case No. _____. Attach statement describing the specific amendment sought.

2. Name of Employer MDE, LLC dba McDermott Excavating		Employer Representative to contact Tara Duggan	Tel. No. 5635834633
3. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) 14407 HWY 20 West		Fax No. 5635835858	
4a. Type of Establishment (Factory, mine, wholesaler, etc.) Excavating Contractor	4b. Identify principal product or service Excavating	Cell No.	e-Mail
5. Unit Involved (In UC petition, describe present bargaining unit and attach description of proposed clarification.) Included International Union of Operating Engineers, Local Union No. 234 Excluded		6a. Number of Employees in Unit: Present 6 Proposed (By UC/AC)	
(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)		6b. Is this petition supported by 30% or more of the employees in the unit? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No *Not applicable in RM, UC, and AC	

7a. <input type="checkbox"/> Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state).			
7b. <input type="checkbox"/> Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.			
8. Name of Recognized or Certified Bargaining Agent (If none, so state.) Brian Vaske		Affiliation IUOE 234	
Address	Tel. No.	Date of Recognition or Certification	
	Cell No.	Fax No.	e-Mail
9. Expiration Date of Current Contract. If any (Month, Day, Year) 04/30/19		10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day and Year)	
11a. Is there now a strike or picketing at the Employer's establishment(s) Involved? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		11b. If so, approximately how many employees are participating?	
11c. The Employer has been picketed by or on behalf of (Insert Name) _____, a labor organization, of (Insert Address) _____ Since (Month, Day, Year) _____			

12. Organizations or individuals other than Petitioner (and other than those named in items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above. (If none, so state)			
Name	Address	Tel. No.	Fax No.
		Cell No.	e-Mail

13. Full name of party filing petition (If labor organization, give full name, including local name and number)

14a. Address (street and number, city, state, and ZIP code)	14b. Tel. No. EXT	14c. Fax No.
	14d. Cell No.	14e. e-Mail

15. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization)

I declare that I have read the above petition and that the statements are true (b) (6), (b) (7)(C)			
Name (Print) (b) (6), (b) (7)(C)	Title (b) (6), (b) (7)(C)		
Address (Street and number, city, state, and ZIP code) (b) (6), (b) (7)(C)	Tel. No.	Fax No.	
	Cell No.	e-Mail	(b) (6), (b) (7)(C)

FINE AND IMPRISONMENT (U.S.C.)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SUBREGION 33
101 SW Adams St
Suite 400
Peoria, IL 61602

Agency Website: www.nlrb.gov
Telephone: (309)671-7080
Fax: (309)671-7095

April 8, 2019

(b) (6), (b) (7)(C)

Re: MDE, LLC dba McDermott Excavating
Case 25-RD-238741

Dear (b) (6), (b) (7)(C)

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

Decision to Dismiss: As a result of the investigation, I find that further proceedings are unwarranted. The investigation disclosed that.

The investigation into your petition established that the employees involved in the instant petition are covered by a collective bargaining agreement between MDE, LLC d/b/a McDermott Excavating (Employer) and the International Union of Operating Engineers, Local 234 (Union), which is effective from May 1, 2016 through and including April 30, 2019. The Board has held that a collective bargaining agreement of three years or less in duration bars the processing of a petition which is not filed more than 60 days but less than 90 days before the expiration date of the contract. *Leonard Wholesale Meats*, 136 NLRB 1000 (1962). Since your filing of the petition and accompanying documentation required by the Board's Rules and Regulations was not completed until March 29, 2019, your petition was not filed during the 60 to 90 day period preceding the expiration of the collective bargaining agreement. As such, the status of the Union as the employees' bargaining representative cannot be challenged at this time and I am dismissing the petition in this matter.

Right to Request Review: Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.

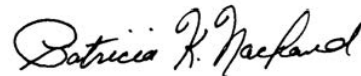
Procedures for Filing Request for Review: A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **April 22, 2019**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on April 22, 2019**.

Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,



PATRICIA K. NACHAND
Regional Director

Tara Duggan, President
MDE, LLC dba McDermott Excavating
14407 US 20
Dubuque, IA 52003

Daniel R. Simandl, Attorney
Von Briesen & Roper, S.C.
411 E Wisconsin Ave Ste 1000
Milwaukee, WI 53202-4409

Robert J. Simandl, Attorney
Von Briesen & Roper, S.C.
411 E Wisconsin Ave
Suite 1000
Milwaukee, WI 53202

Brian Vaske, Auditor
International Union of Operating Engineers Local
234
4880 Hubbell Avenue
Des Moines, IA 50317

Jay M. Smith, Attorney
Smith & McElwain
505 5TH ST STE 530
PO Box 1194
Sioux City, IA 51102-1194

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RD PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 04-RD-238986	Date Filed 4/4/19

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer LUCAS MOTOR COMPANY		2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) 900 E ROUTE 130N NJ BURLINGTON 08016-	
3a. Employer Representative - Name and Title COLIN LUCAS GENERAL MANAGER		3b. Address (If same as 2b - state same) 900 E ROUTE 130N NJ BURLINGTON 08016-	
3c. Tel. No. (609) 386-3100	3d. Cell No.	3e. Fax No. (609) 386-7586	3f. E-Mail Address SYANKELUNAS@LUCASFORDCARS.COM
4a. Type of Establishment (Factory, mine, wholesaler, etc.) Others		4b. Principal product or service Automotive Sales and Service	5a. City and State where unit is located: Burlington, NJ

5b. Description of Unit Involved Included: See Attached Page 2 for additional details Excluded: See Attached Page 2 for additional details	6a. No. of Employees in Unit: 10 6b. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
---	--

Check One: ☐ **7a.** Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about _____ (Date) (If no reply received, so state).
☐ **7b.** Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent United Service Workers 455 Lou ? representative of union		8b. Address 138-50 QUEENS BOULEVARD NY BRIARWOOD 11435-	
8c. Tel No. (646) 988-1204	8d. Cell No.	8e. Fax No.	8f. E-Mail Address
8g. Affiliation, if any		8h. Date of Recognition or Certification 02/01/2016	8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year) 08/31/2019

9. Is there now a strike or picketing at the Employer's establishment(s) involved? No _____ If so, approximately how many employees are participating? _____
(Name of labor organization) _____ has picketed the Employer since (Month, Day, Year) _____

10. Organizations or individuals other than those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)

10a. Name (b) (6), (b) (7)(C)	10b. Address (b) (6), (b) (7)(C)	10c. Tel. No. (b) (6), (b) (7)(C)	10d. Cell No.
		10e. Fax No.	10f. E-Mail Address (b) (6), (b) (7)(C)

11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.		11a. Election Type: <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail	
11b. Election Date(s): 04/26/2019	11c. Election Time(s): 8:00AM	11d. Election Location(s): BREAK ROOM	

12a. Full Name of Petitioner (b) (6), (b) (7)(C)	12b. Address (street and number, city, state, and ZIP code) (b) (6), (b) (7)(C)
--	---

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state) NJ BURLINGTON 08016- _____

12d. Tel No. (b) (6), (b) (7)(C)	12e. Cell No.	12f. Fax No.	12g. E-Mail Address (b) (6), (b) (7)(C)
--	----------------------	---------------------	---

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title		13b. Address (street and number, city, state, and ZIP code)	
13c. Tel No.	13d. Cell No.	13e. Fax No.	13f. E-Mail Address

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print) (b) (6), (b) (7)(C)	Signature (b) (6), (b) (7)(C)	Title (b) (6), (b) (7)(C)	Date 03/28/2019 11:51:03
--	---	-------------------------------------	------------------------------------

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Attachment

Employees Included
Service technicians and parts personnel

Employees Excluded
all other employees

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
04-RD-238986	4/4/19



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 4
100 E Penn Square
Suite 403
Philadelphia, PA 19107

Agency Website: www.nlrb.gov
Telephone: (215)597-7601
Fax: (215)597-7658

April 9, 2019

Colin Lucas, General Manager
Lucas Motor Company
900 E Route 130 N
Burlington, NJ 08016

Re: Lucas Motor Company
Case 04-RD-238986

Dear Mr. Lucas:

This is to advise you that the Petitioner's request to withdraw the petition in the above case has been approved.

Very truly yours,


/s/ Dennis P. Walsh

DENNIS P. WALSH
Regional Director

cc: Lou Loiacono, Union Representative
United Service Workers 455
138-50 Queens Boulevard
Briarwood, NY 11435

Gary P. Rothman, Esquire
Rothman Rocco LaRuffa LLP
3 West Main Street, Suite 200
Elmsford, NY 10523

(b) (6), (b) (7)(C)



UNITED STATES OF AMERICA
 NATIONAL LABOR RELATIONS BOARD
 RD PETITION

Case No.

02-RD-239591

Date Filed

4/12/19

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlrb.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 7 below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-105); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. **PURPOSE OF THIS PETITION: RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE)** - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer Donato Marangi Inc., Cottage Carting Inc., DBA as		2b. Address(es) of Establishment(s) involved (Street and number, city, state, ZIP code) 175 Rte. 303 Valley Cottage NY & 366 Highland Ave. Ext. Middletown NY	
3a. Employer Representative - Name and Title Mike Marangi - Owner		3b. Address (if same as 2b - state name) 175 Rte. 303 Valley Cottage NY	
3c. Tel. No. 845-268-7278	3d. Fax No. 845-268-0352	3e. Cell No.	3f. E-Mail Address info@marangidisposal.com
4a. Type of Establishment (Factory, mine, wholesaler, etc.) Private Sanitation		4b. Principal product or service Waste Collection	
5a. Description of Unit Involved Included: All regular full time and part time employees Excluded: All clerical, security guards, supervisors, etc. as defined by the Act			5b. City and State where unit is located: Valley Cottage NY Middletown NY

6. No. of Employees in Unit 70	7. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
8a. Name of Recognized or Certified Bargaining Agent Waste Material Recycling & General Industrial Local 108, LIUNA AFL-CIO		8b. Affiliation, if any LIUNA	
8c. Address 121 East 24th Street New York NY 10010		8d. Tel. No. 212-925-9634	8e. Cell No.
		8f. Fax No. 212-925-0941	8g. E-Mail Address
9. Date of Recognition or Certification February 1, 2016		10. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year) January 31, 2019	

11a. Is there now a strike or picketing at the Employer's establishment(s) involved? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	11b. If so, approximately how many employees are participating?
11c. The Employer has been picketed by or on behalf of (Insert Name) (Insert Address) since (Month, Day, Year)	

12. Organizations or individuals other than those named in items 8 and 11c, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5 above. (If none, so state)			
12a. Name NONE	12b. Address	12c. Tel. No.	12d. Fax No.
		12e. Cell No.	12f. E-Mail Address

13. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.		13a. Election Type: <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail
13b. Election Date(s)	13c. Election Time(s)	13d. Election Location(s) Valley Cottage & Middletown NY locations

(b) (6), (b) (7)(C)		14a. Address (Street and number, city, state, ZIP code) (b) (6), (b) (7)(C)	14b. Tel. No.	14c. Fax No.
		(b) (6), (b) (7)(C)	14d. E-Mail Address	

14f. Affiliation, if any		15. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceedings.	
15a. Name	15b. Title		
15c. Address (Street and number, city, state, ZIP code) (b) (6), (b) (7)(C)	15d. Tel. No.	15e. Fax No.	
	15f. Cell No.	15g. E-Mail Address	

I declare that I have read the above petition and its contents and believe the statements therein to be true and correct.		Signature and Title (b) (6), (b) (7)(C)		Date Filed
---	--	--	--	------------

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT UNDER SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these routine uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to initiate its processes.

 RECEIVED
 APR 12 2019



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 02
26 Federal Plz Ste 3614
New York, NY 10278-3699

Agency Website: www.nlr.gov
Telephone: (212)264-0300
Fax: (212)264-2450

April 25, 2019

(b) (6), (b) (7)(C)

Re: Donato Marangi, Inc., Cottage Carting Inc.,
Case 02-RD-239591

Dear (b) (6), (b) (7)(C)

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

Decision to Dismiss: As a result of the investigation, I find that further proceedings are unwarranted. The investigation disclosed that Donato Marangi, Inc. and Cottage Carting, Inc. d/b/a Marangi Disposal (the Employer) and Waste Material Recycling and General Industrial Local 108, LIUNA, AFL-CIO (the Union) were parties to a three-year collective-bargaining agreement that terminated on January 31, 2019. The Employer and Union executed an agreement dated January 31, 2019 that extended the agreement through and including April 30, 2019, which is a period of at least 90 days.

It was concluded that the January 31, 2019 agreement constituted a contract bar because the Petition was filed during the "insulated period" instead of during the open period of 60 to 90 days before expiration. *Deluxe Metal Furniture Co.*, 121 NLRB 995 (1958). The "insulated period" was adopted to afford parties to an expiring contract an opportunity to negotiate and execute a new or amended agreement without the disrupting effect of rival petitions. An agreement acquires contract bar qualities if it is at least 90 days duration. *Crompton Company, Inc.*, 260 NLRB 417, 418 (1982).

You contend that the Union and Employer executed the agreement on April 11, 2019 rather than on January 31, 2019. Assuming your contention to be true, the petition was nevertheless untimely because it was not filed until the day after the agreement was executed. *Deluxe Metal Furniture Co.*, 121 NLRB 995 (1958); *Santa Fe Trail Transportation Co.*, 139 NLRB 1513, 1514 (1962). You also contend that the agreement was not a contract bar because it was not at least one year in duration. However, the decisions that you cite in support of your contentions are distinguishable. The contract in *Union Bag & Paper Corporation*, 110 NLRB 1631 (1955) had expired and the extension agreement was of indefinite duration. The petition in *Frye & Smith, Ltd.*, 151 NLRB 49 (1965) was filed between expiration of one contract and the execution of another. The petition in *Madelaine Chocolate Novelties, Inc.*, 333 NLRB 1312

(2001) was filed more than three years after the contract went into effect, and the purported successor agreement did not change the parties' existing obligations. In essence, the "new" contract in that case was an attempt to transform the fourth year of a 4-year contract into a 1-year bar merely by changing the dates of the agreement, and it was nothing more than an agreement to begin negotiations in the near future. In contrast, the agreement in this case is of a specific duration that is at least 90 days and no more than three years, and it does not contain any conditions precedent or conditions subsequent, such as being superseded if the parties reach a new contract before April 30. With respect to your contention that an agreement must be of at least one year duration to acquire contract bar qualities, the Board did not make such a finding in any of the decisions that you cited. Instead, the Board found in *Crompton Company, Inc.*, 206 NLRB 417 (1982) that an agreement will act as a contract bar if it at least 90 days duration.

Accordingly, I am dismissing the petition in this matter.

Right to Request Review: Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.

Procedures for Filing Request for Review: A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **May 9, 2019**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on May 9, 2019**.

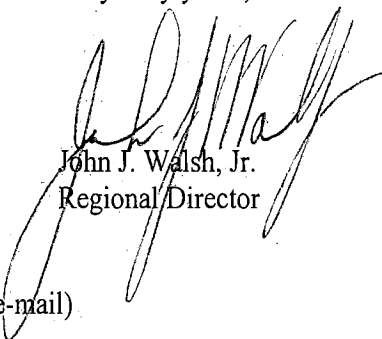
Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement

that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,



John J. Walsh, Jr.
Regional Director

cc: Office of the Executive Secretary (by e-mail)

Mike Marangi, Owner
DONATO MARANGI, INC., COTTAGE
CARTING, INC.
175 Route 303
Valley Cottage, NY 10989

Richard I. Milman, Esq.
Milman Labuda Law Group, PLLC.
3000 Marcus Avenue, Suite 3W8
Lake Success, New York 11042

Waste Material Recycling and General Industrial
Local 108, LIUNA, AFL-CIO
121 East 24th Street
New York, NY 10010

Tamir W. Rosenblum, Esq.
Mason Tenders District Council of Greater New
York and Long Island
520 Eighth Avenue, Suite 650
New York, NY 10018

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
RD PETITION

Case No.

20-RD-240118

Date Filed

4/23/2019

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 7 below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RD- DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.			
2a. Name of Employer Sheedy Drayage Company		2b. Address(es) of Establishment(s) involved (Street and number, city, state, ZIP code) 1215 Michigan Street, San Francisco, CA 94107	
3a. Employer Representative - Name and Title Richard Battani		3b. Address (If same as 2b - state name) Same	
3c. Tel. No. (415) 642-6642	3d. Fax No.	3e. Cell No.	3f. E-Mail Address rbattani@sheedycrane.com
4a. Type of Establishment (Factory, mine, wholesaler, etc.) Crane and Drayage Company		4b. Principal product or service Construction	
5a. Description of Unit Involved Included: All full time and regular part time Journeymen, Automotive Mechanics, Machinists, Motorcycle, Electrical, Body and Fender, Radiator, Frame, Welders, Trimmers, Radio, Erection and/or Construction Machinists and Heavy Duty Repairmen, Specialists and Apprentices, Foremen, Testers, Automotive Repair and Maintenance Dispatchers, Automotive Repair and Maintenance Service Salesmen, and all other Mechanics working on automotive or electrical equipment. Excluded: Managers, guards, and supervisors as defined by the Act.			5b. City and State where unit is located: San Francisco, CA
6. No. of Employees in Unit 4		7. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
8a. Name of Recognized or Certified Bargaining Agent International Association of Machinists and Aerospace Engineers (Local 1414)		8b. Affiliation, if any AFL-CIO	
8c. Address 150 South Blvd. San Mateo, CA 94402		8d. Tel. No. (650) 341-2689	8e. Cell No. (b) (5), (b) (6), (b) (7)(C)
		8f. Fax No.	8g. E-Mail Address (b) (5), (b) (6), (b) (7)(C)
9. Date of Recognition or Certification		10. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year) April 30, 2016	
11a. Is there now a strike or picketing at the Employer's establishment(s) involved? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		11b. If so, approximately how many employees are participating?	
11c. The Employer has been picketed by or on behalf of (Insert Name) (Insert Address)		a labor organization, of since (Month, Day, Year)	
12. Organizations or individuals other those named in items 8 and 11c, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5 above. (If none, so state)			
12a. Name	12b. Address	12c. Tel. No.	12d. Fax No.
		12e. Cell No.	12f. E-Mail Address
13. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.		13a. Election Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail	
13b. Election Date(s) 4/24/18	13c. Election Time(s) 9:00 am	13d. Election Location(s) Employer's facility	
14. Full Name of Petitioner (b) (6), (b) (7)(C)			
14a. Address (Street and number, city, state, ZIP code) (b) (6), (b) (7)(C)		14b. Tel. No. (b) (6), (b) (7)(C)	14c. Fax No.
		14d. Cell No. (b) (6), (b) (7)(C)	14e. E-Mail Address (b) (6), (b) (7)(C)
14f. Affiliation, if any			
15. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.			
15a. Name (b) (6), (b) (7)(C)		15b. Title	
15c. Address (Street and number, city, state, ZIP code) (b) (6), (b) (7)(C)		15d. Tel. No.	15e. Fax No.
		15f. Cell No. (b) (6), (b) (7)(C)	15g. E-Mail Address (b) (6), (b) (7)(C)
I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.			
Name (Print) (b) (6), (b) (7)(C)	Signature	Title	Date Filed

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Agency Website: www.nlr.gov
Telephone: (415)356-5130
Fax: (415)356-5156

May 1, 2019

(b) (6), (b) (7)(C)

Re: Sheedy Drayage Company
Case 20-RD-240118

Dear (b) (6), (b) (7)(C)

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

Decision to Dismiss: As a result of the investigation, I find that further proceedings are unwarranted. The investigation revealed that the Employer and Union are parties to an existing and current collective bargaining agreement (contract) that is effective May 1, 2018 to April 30, 2019, which contains an automatic-renewal clause. Where a union and an employer have an existing contract, a timely representation petition must be filed more than 60 days but less than 90 days before the expiration of the contract. *Leonard Wholesale Meats*, 136 NLRB 1000 (1962). In this case, the petition was filed on April 23, 2019, and is therefore untimely.

Although an existing contract will not bar an election if it is of indefinite duration, *Lane Aviation Corp.*, 211 NLRB 824 (1974), or it extends an expired agreement pending negotiations, *Union Bag & Paper Corp.*, 110 NLRB 1631 (1955), the investigation disclosed that these exceptions do not apply here because the contract in the instant case has a fixed 1-year term. Although the contract contains automatic-renewal language, such language does not render the duration of a contract indefinite. See *ALJUD Licensed Home Care Services*, 345 NLRB 1089 (2005).

Accordingly, I am dismissing the petition in this matter. However, in the event the parties elected to negotiate a successor contract, rather than allow the contract to automatically renew for another year, a petition filed on or after May 1, 2019 and before the parties reach a new contract would be deemed timely.

Right to Request Review: Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.

Procedures for Filing Request for Review: A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **May 15, 2019**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on May 15, 2019**.

Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,

JILL H. COFFMAN
Regional Director

cc: Office of the Executive Secretary (by e-mail)

Richard Battani
Sheedy Drayage Company
1215 Michigan Street
San Francisco, CA 94107

(b) (6), (b) (7)(C)

International Association of Machinists and
Aerospace Workers, Local Lodge 1414
150 South Blvd
San Mateo, CA 94402-2470

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
RC PETITION

DO NOT WRITE IN THIS SPACE

Case No. 04-RC-240994

Date Filed
5/7/19

INSTRUCTIONS: Unless e-Filed using the Agency's website, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer:
First Student Inc.

2b. Address(es) of Establishment(s) involved (Street and number, City, State, ZIP code):
1 Walter St. Colwyn PA 19203

3a. Employer Representative - Name and Title:
Michael Powell and Andrew Joppa, Sr Dir.

3b. Address (if same as 2b - state same):
1413 Windybush Road, Wilmington, DE 19810

3c. Tel. No.
401-309-4733

3d. Cell No.

3e. Fax No.
401-633-7013

3f. E-Mail Address
andrew.joppa@firstgroup.com

4a. Type of Establishment (Factory, mine, wholesaler, etc.)
Transportation

4b. Principal Product or Service
Transportation

5a. City and State where unit is located:
Colwyn PA

5b. Description of Unit Involved:
Included:
See attached sheet
Excluded:
See attached sheet

6a. Number of Employees in Unit:
114

6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? ☒ Yes ☐ No

Check One: ☐ 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state).
☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent (If none, so state)
UTU Local 172-Tonette Nixon-Pray General Chairpers

8b. Address:
5050 Wynnefield Ave. Apt. 102 Phila. PA 19131

8c. Tel. No.
(215) 275-7986

8d. Cell No.

8e. Fax No.

8f. E-Mail Address
chrissynixon1526@gmail.com

8g. Affiliation, if any:
SMART

8h. Date of Recognition or Certification

8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year) 6/30/19

9. Is there now a strike or picketing at the Employer's establishment(s) involved? ☒ If so, approximately how many employees are participating? _____
(Name of Labor Organization) _____ has picketed the Employer since (Month, Day, Year) _____

10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)

10a. Name
NONE

10b. Address

10c. Tel. No.

10d. Cell No.

10e. Fax No.

10f. E-Mail Address

11. Election Details: If the NLRB conducts and election in this matter, state your position with respect to any such election: **11a. Election Type:**
☒ Manual ☐ Mail ☐ Mixed Manual/Mail

11b. Election Date(s):
earliest date possible

11c. Election Time(s):
to be determined by the region

11d. Election Location(s):
to be determined by the region

12a. Full Name of Petitioner (including local name and number):
United Steelworkers Local 286

12b. Address (street and number, city, State and ZIP code):
410-24 North 8th Street Phila. PA 19123

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state):
United Steelworkers

12d. Tel. No.
(215) 829-9212

12e. Cell No.

12f. Fax No.
(215)940-9969

12g. E-Mail Address

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title:
(b) (6), (b) (7)(C)

13b. Address (street and number, city, State and ZIP code):
410-24 North 8th Street Phila. PA 19123

13c. Tel. No.
(b) (6), (b) (7)(C)

13d. Cell No.

13e. Fax No.
(b) (6), (b) (7)(C)

13f. E-Mail Address
(b) (6), (b) (7)(C)

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Title

(b) (6), (b) (7)(C) Local 286

Date

5/6/19

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

Attachment

Included: All School Bus Operators, Aides, Trainers and Yardmen employed by the Company servicing its contract with William Penn School District.

Excluded: Mechanics, clerks, guards and supervisors as defined in the Act, and all other employees.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 4
100 E Penn Square
Suite 403
Philadelphia, PA 19107

Agency Website: www.nlrb.gov
Telephone: (215)597-7601
Fax: (215)597-7658

May 13, 2019

(b) (6), (b) (7)(C)

United Steelworkers Local 286
410-24 North 8th Street
Philadelphia, PA 19123

Re: First Student, Inc.
Case 04-RC-240994

Dear (b) (6), (b) (7)(C)

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

Decision to Dismiss: As a result of the investigation, I find that further proceedings are unwarranted. The investigation disclosed that the Employer and SMART Transportation Division Local 172 are signatory to a three-year collective-bargaining agreement that is effective by its terms from July 1, 2016 to June 30, 2019. Parties to a collective-bargaining agreement are provided with a 60—day "insulated period" immediately preceding the expiration date of a contract to negotiate and execute a new contract. *Deluxe Metal Furniture Co.*, 121 NLRB 995 (1958). In order to be timely with respect to an existing contract, a petition must be filed during a window period of more than 60 days, but less than 90 days, before the contract expires. *Leonard Wholesale Meats*, 136 NLRB 1000 (1962). Based on its June 30, 2019 expiration date, a petition filed during the term of the parties' current agreement would have had to have been filed on or between April 2 and May 1, 2019. You did not file the petition in this case until May 7, 2019, which is outside the window period and within the insulated period during which no petition may be entertained. You contend that you were prevented from filing during the window period because another union submitted a petition and you intended to intervene in that proceeding to get on the ballot in the election, but the other union did not pursue its petition. The fact remains, however, that at all times you had the opportunity to file your own petition during the open period, and you failed to do so. Your petition is therefore untimely. Accordingly, I am dismissing the petition in this matter and withdrawing the Notice of Hearing.

Right to Request Review: Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.

Procedures for Filing Request for Review: A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (5 p.m. Eastern

Time) on May 28, 2019, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on May 28, 2019**.

Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,

/s/ Dennis P. Walsh

DENNIS P. WALSH
Regional Director

cc: Office of the Executive Secretary (by e-mail)

Tonette Nixon-Pray, General Chairperson
UTU Local 172 a/w SMART
5050 Wynnefield Avenue
Apt. 102
Philadelphia, PA 19131

Erika A. Diehl-Gibbons, Associate General Counsel
SMART Transportation Division
24950 Country Club Blvd
Ste 340
North Olmsted, OH 44070-5333

Andrew Joppa, Senior Director
First Student, Inc.
1413 Windybush Rd.
Wilmington, DE 19810

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RC PETITION

DO NOT WRITE IN THIS SPACE

Case No.
12-RC-241487

Date Filed
MAY 15, 2019

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer
Los Cipreses

2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code)
Carr. 840 Bayamon, P.R.

3a. Employer Representative - Name and Title
Zuhma Acosta, Dir. Personal

3b. Address (If same as 2b - state same)
Same

3c. Tel. No.
787-799-2929

3d. Cell No.

3e. Fax No.
787-799-2930

3f. E-Mail Address

4a. Type of Establishment (Factory, mine, wholesaler, etc.)
Cementery

4b. Principal product or service
Cementery / Funeral

5a. City and State where unit is located:
Bayamon

5b. Description of Unit Involved

Included: All service and maintenance employed by the employer at the cementery in Bayamon.
Excluded: All other employees, clerical employees, guards, supervisors defined in the Act.

6a. No. of Employees in Unit:
16

6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? Yes ☒ No ☐

Check One: ☐ 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) (If no reply received, so state).
☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent (If none, so state).
Union de Transeistas, Local 901

8b. Address
352 Calle del Parque, S.J. PR 00912

8c. Tel. No.
721-8480

8d. Cell No.

8e. Fax No.
724-2190

8f. E-Mail Address
trogguista14901@gmail.com

8g. Affiliation, if any
IRT

8h. Date of Recognition or Certification

8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)
3/3/2014

9. Is there now a strike or picketing at the Employer's establishment(s) involved? NO If so, approximately how many employees are participating? _____
(Name of labor organization) _____ has picketed the Employer since (Month, Day, Year) _____

10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)
NONE

10a. Name
10b. Address
10c. Tel. No.
10d. Cell No.
10e. Fax No.
10f. E-Mail Address

11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.
11a. Election Type: ☒ Manual ☐ Mail ☐ Mixed Manual/Mail

11b. Election Date(s):
5/27/2019

11c. Election Time(s):
7:00 AM - 9:00 AM

11d. Election Location(s):
Caguas

12a. Full Name of Petitioner (including local name and number)
Central General de Trabajadores (CGT)

12b. Address (street and number, city, state, and ZIP code)
PO Box 152 901 SS, PR 00919-2901

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state)
None

12d. Tel. No.
296-4924

12e. Cell No.

12f. Fax No.
328-4330

12g. E-Mail Address
catpuertorico@gmail.com

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title
Scott F. Barba

13b. Address (street and number, city, state, and ZIP code)

13c. Tel. No.
296-4924

13d. Cell No.

13e. Fax No.
328-4330

13f. E-Mail Address
sbarba@gmail.com

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print)
Scott F. Barba

Signature
[Signature]

Title
Rep

Date
5/15/2019

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

EMPRESAS STEWART CEMENTERIOS d/b/a
CEMENTERIOS LOS CIPRESES

Employer

and

CENTRAL GENERAL DE TRABAJADORES

Case 12-RC- 241487

Petitioner

and

UNION DE TRONQUISTAS DE PUERTO RICO,
LOCAL 901, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

Intervenor

DECISION AND ORDER

On May 15, 2019, Central General de Trabajadores (the Petitioner) filed a petition under Section 9(c) of the National Labor Relations Act, herein called the Act, seeking to represent the following unit of employees (the Unit) of Empresas Stewart Cementerios d/b/a Cementerio los Cipreses (the Employer), a corporation engaged in the business of funeral and burial services in Puerto Rico:¹

All full-time and regular part-time service and maintenance employees employed by the Employer at Cementerio Los Cipreses in Bayamon, Puerto Rico; excluding all other employees, guards and supervisors as defined in the Act.²

¹ The parties stipulated, and I find, based on the following stipulated facts, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act. The Employer is a Puerto Rico corporation with a main place of business located at Carretera 840, Bayamon, Puerto Rico 00959. The Employer is engaged in the business of funeral and burial services in Puerto Rico. During the past twelve months, in conducting its business operations described above, the Employer purchased and received goods and materials at its places of business in Bayamon and Trujillo Alto, Puerto Rico valued in excess of \$50,000 directly from places outside of the Commonwealth of Puerto Rico. During the same 12-month period, the Employer also earned revenues in excess of \$500,000.

² The parties stipulated, and I find, that the unit is appropriate for purposes of collective bargaining.

The Intervenor, Union de Tronquistas de Puerto Rico, Local 901, International Brotherhood of Teamsters, is the incumbent union currently representing the employees in the petitioned-for unit.³ There are approximately sixteen employees in the unit.

The only issue in this case is whether the collective-bargaining agreement between the Employer and the Intervenor automatically renewed and constitutes a contract bar to the processing of the petition. The Employer and Intervenor assert that there is a contract bar that precludes processing of this petition and warrants its dismissal. They argue that their collective-bargaining agreement that was effective until March 31, 2019, automatically renewed for a year pursuant to Article 29 of the agreement, and is in effect until March 31, 2020, and therefore the petition is untimely filed and should be dismissed. The Petitioner claims that the unit employees should have the right to petition for a new collective-bargaining representative or to disaffiliate from an incumbent union after the third year of a contract absent negotiations or substantial changes in the working conditions of employees. The Petitioner further claims that the unit employees were notified by a representative of the Intervenor that negotiations for a new collective-bargaining agreement were to start, and a bargaining committee would be formed, but concedes that negotiations were not started and a bargaining committee was not formed.

I have considered the evidence and arguments presented by the parties, and for the reasons described below, I conclude that the petition is barred by the contract bar doctrine. As such, I am dismissing the petition as untimely filed.

A hearing officer of the National Labor Relations Board (the Board) held a hearing in this matter, and the parties had the opportunity to orally argue their respective positions prior to the

³ The parties stipulated, and I find, that the Petitioner, Central General de Trabajadores, and the Intervenor, Union de Tronquistas de Puerto Rico, Local 901 are labor organizations within the meaning of Section 2(5) of the Act.

closing of the hearing. The Petitioner, Employer, and Intervenor appeared and participated in the hearing.

I. Facts

The Employer is a company that provides funeral and burial services in Bayamon and Trujillo Alto, Puerto Rico. The Intervenor has represented the petitioned-for unit of employees, consisting of service and maintenance employees in the Bayamon facility, since March 27, 1990, pursuant to the Certification of Representative issued by the National Labor Relations Board in Case 24-RC-7299. This unit of employees was previously employed by the Employer's predecessor, Luis S. Del Valle Montalvo d/b/a Los Cipreses Memorial Park. The Employer and the Intervenor have been parties to a series of collective-bargaining agreements.

On October 24, 2018, the Employer and the Intervenor signed their most recent collective-bargaining agreement, which was effective by its terms from April 1, 2016, through March 31, 2019. Article 29 of the collective-bargaining agreement states the following:

ARTICLE XXIX – VALIDITY

This Collective Bargaining Agreement shall be in effect from its signing date and until March 31, 2019.

Its validity period, upon the expiration date, shall be automatically renewed annually, unless one party notifies the other in writing of its desire to terminate, amend or modify the Collective Bargaining Agreement, prior to its expiration date or effective date. In the event there is a notice of modification, as stated above, the negotiations for a new Collective Bargaining Agreement must begin soon after such notice, but no more than thirty (30) days prior to the expiration date of this Collective Bargaining Agreement or any extension of the same, as long as the initiating party has notified the provisions of the Collective Bargaining Agreement that it wishes to modify, and its proposal for such purposes.

In addition to the automatic renewal provision, the agreement contains 28 other articles regarding a wide range of terms and conditions of employment. Examples include articles concerning

salaries, work schedule, various benefits, grievance and arbitration procedure, strikes and lockouts, subcontracting, seniority, and maintenance of employment conditions.

Jennifer Ramos, the Employer's Area General Manager, testified that she participated in the negotiations for the contract that was effective by its terms until March 31, 2019. She testified that to her knowledge neither the Employer nor the Intervenor notified each other of any desire to negotiate any new terms of employment for the period following that agreement.⁴ Intervenor representative Argenis Carrillo, who has been in that position since about 2009, testified that the Intervenor did not notify the Employer of any intention or desire to terminate or amend the contract at any time before the contract expired by its terms on March 31, 2019. Carrillo explained that he is the Intervenor's representative who would direct the Intervenor's secretary to send any such notification, and that he did not do so in this case. Carrillo further testified that the Employer did not notify the Intervenor of any desire to terminate, amend or modify the contract before it expired by its terms on March 31, 2019. Carrillo also denied that he spoke to the unit employees about forming a bargaining committee to begin the process of negotiations for a successor collective-bargaining agreement.

The Petitioner did not present any witnesses or evidence at the hearing. The Petitioner requested that the Board issue a subpoena to an employee or allow the employee to provide his testimony at a later time.⁵ The Petitioner's request was denied because the Petitioner had the opportunity to request a subpoena prior to the hearing and did not do so.

⁴ Manager Ramos explained that although she does not communicate directly with the Intervenor, she always gets notice of such communications because of her position in the company.

⁵ The Petitioner claimed that the Employer denied the employee's request to attend the hearing.

II. Analysis

A. The Contract Bar Doctrine

The purpose behind the Board's contract bar policy is to achieve "a finer balance between the statutory policies of stability in labor relations and the exercise of free choice in the selection or change of bargaining representatives." *Appalachian Shale Products Co.*, 121 NLRB 1160, 1161 (1958). "The doctrine's dual rationale is to permit the employer, the employees' chosen bargaining representative, and the employees, a reasonable, uninterrupted period of collective bargaining stability, while also permitting the employees, at reasonable times, to change their collective bargaining representative." *Direct Modern Press Litho*, 328 NLRB 860, 860 (1999). See also *Union Fish Co.* 156 NLRB 187, 191 (1965).

The burden of proving the existence of a contract bar is on the party or parties asserting the that the contract is a bar. *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970); *Bo-Low Lamp Corp.*, 111 NLRB 505 (1955). To serve as a bar to an election, a contract must satisfy the following specific formal and substantive requirements. The contract must be: (1) be reduced to writing; (2) be signed by all the parties prior to the filing of the petition; (3) contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship; (4) clearly encompass the employees involved in the petition; and (5) cover an appropriate bargaining unit. *Appalachian Shale*, 121 NLRB 1160, 1162-1164 (1958).

An existing collective-bargaining agreement constitutes a bar to an election within the unit covered by that agreement and precludes the filing of a petition for an election in that unit. Only contracts of a "reasonable duration" will serve as a bar to a petition, and the Board has defined these as contracts with a term of three years or less. *General Cable Corp.*, 139 NLRB 1123, 1125 (1962).

If a contract is automatically renewed by its terms, the automatic renewal period constitutes a contract bar, unless a petition is timely filed prior to the expiration of the renewal period. *Deluxe Metal Furniture Co.*, 121 NLRB 995, 1000-1002 (1958); *Herlin Press*, 177 NLRB 940 (1969); A contract containing an automatic renewal provision renews unless notice of intent to terminate or modify the contract forestalls renewal. *Empire Screen Printing, Inc.*, 249 NLRB 718 (1980); *Road Materials*, 193 NLRB 990 (1971); *Moore Drop Forging Co.*, 168 NLRB 984 (1967); *University Lithoprinters*, 123 NLRB 1865 (1959). A new document memorializing the automatic renewal is not required. *ALJUD Licensed Home Care Services*, 345 NLRB 1089 (2005).

It is well established that when an incumbent union has a valid contract with the employer covering a unit of employees, a petition may not be filed during the term of the contract, except within a “window period” of 90 to 60 days before the expiration of the contract.⁶ *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000, 1001 (1962), modifying *Deluxe Metal Furniture Co.*, supra. In addition, in the absence of an automatic renewal, a petition may also be filed at any time after the agreement expires and before a new agreement is signed. *Union Carbide Corp.*, 190 NLRB 191 (1971). When a contract has automatically renewed, the window period is the period from 90 to 60 days before the end of the renewal period.

B. The Contract Automatically Renewed and the Processing of the Petition is Barred.

Based on the undisputed evidence, I find that the collective-bargaining agreement between the Employer and the Intervenor has automatically renewed and is in effect until March 31, 2020. Accordingly, the petition here filed on May 15, 2019, was untimely filed under the Board’s

⁶ The 60 days before the contract expires is considered an “insulated period” when no petitions may be filed to enable the contracting parties to reach a new agreement during the final days of their contract. *Deluxe Metal Furniture Co.*, supra.

contract bar doctrine. The window period for the timely filing of a petition during the current renewal period will be from 90 days to 60 days before March 31, 2020; i.e. from January 2, 2020 to January 31, 2020.

The collective-bargaining agreement between the Employer and the Intervenor contains the elements necessary for the contract bar doctrine to apply. The contract is in writing and signed by representatives of the Employer and the Intervenor. It encompasses the employees in the petitioned-for unit, and as set forth above, it is undisputed that the unit is appropriate for the purposes of collective bargaining. In addition, the agreement contains the “substantial terms” necessary to establish a contract bar, including clear effective and expiration dates.

In addition, neither the Employer nor the Intervenor took any action to forestall automatic renewal of their collective-bargaining agreement, and the agreement automatically renewed for a one-year period, from April 1, 2019 until March 31, 2020. There is no evidence that the Intervenor told employees of its intention to negotiate a new agreement or to form a bargaining committee. In addition, even if that occurred, the contract automatically renewed because there was no written notice by the Employer or the Intervenor of a desire to terminate, amend or modify the contract, prior to its expiration date. As explained above, the Petitioner’s argument that after the third year of a contract, the renewal of the contract should not forfeit the right of employees to raise a question concerning representation at the end of the three years, is contrary to Board law. The automatically renewed contract between the Employer and the Intervenor bars the processing of the petition at this time, and therefore I am dismissing the petition.

III. Conclusions and Findings

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is an employer engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Intervenor and the Petitioner are labor organizations within the meaning of Section 2(5) of the Act.
4. No question concerning commerce exists concerning the representation of the petitioned-for unit of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The renewed collective-bargaining agreement between the Employer and the Intervenor covering the petitioned-for employees, with an expiration date of March 31, 2020, bars an election at this time.

IV. Order

The petition is dismissed.

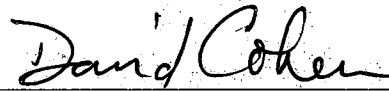
V. Right to Request Review

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by **June 14, 2019**.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review

should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: May 31, 2019.

A handwritten signature in black ink, reading "David Cohen", is positioned above a horizontal line.

David Cohen, Regional Director
National Labor Relations Board, Region 12
201 E. Kennedy Blvd., Suite 530
Tampa, FL 33602-5824

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RC PETITION

DO NOT WRITE IN THIS SPACE	
Case No.	29-RC-242283
Date Filed	5/29/19

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer
ABM Parking Services Inc.

2b. Address(es) of Establishment(s) involved (Street and number, city, state, ZIP code)
LaGuardia Airport, Queens, New York 11371

3a. Employer Representative - Name and Title
Mark Muglich, President

3b. Address (if same as 2b - state same)
One Liberty Plaza, 7th Floor, New York, New York 10006

3c. Tel. No.
347-533-3858

3d. Cell No.

3e. Fax No.

3f. E-Mail Address

4a. Type of Establishment (Factory, mine, wholesaler, etc.)
parking services

4b. Principal product or service
parking

5a. City and State where unit is located:
Flushing, NY

5b. Description of Unit Involved
Included: all full time and regular part time parking attendants and cashiers

Excluded: all other employees including guards, and supervisors as defined in the Act.

6a. No. of Employees in Unit:
80+

6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? Yes ☐ No ☐

Check One: ☐ 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about _____ (Date) (If no reply received, so state).

☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent (if none, so state).
International Union of Journeymen and Allied Trades, Local 726

8b. Address
93 Lake Avenue, Danbury, CT 06810

8c. Tel. No.
203-205-0101

8d. Cell No.

8e. Fax No.

8f. E-Mail Address

8g. Affiliation, if any

8h. Date of Recognition or Certification

8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)
2015

9. Is there now a strike or picketing at the Employer's establishment(s) involved? no If so, approximately how many employees are participating?
(Name of labor organization) _____, has picketed the Employer since (Month, Day, Year) _____

10. Organizations or individuals other than Petitioner and those named in Items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)

10a. Name

10b. Address

10c. Tel. No.

10d. Cell No.

10e. Fax No.

10f. E-Mail Address

11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.

11a. Election Type: ☐ Manual ☐ Mail ☐ Mixed Manual/Mail

11b. Election Date(s):
5-28-19

11c. Election Time(s):
10:00AM to 11:30AM

11d. Election Location(s):
ABM Breakroom at LaGuardia Airport

12a. Full Name of Petitioner (including local name and number)
Local 122 Barclay Center Conversion Union

12b. Address (street and number, city, state, and ZIP code)
48 New Lots Avenue, Brooklyn, New York 11212

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state)

12d. Tel. No.
347-821-0245

12e. Cell No.

12f. Fax No.

12g. E-Mail Address

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title
Micah Wheeler, President

13b. Address (street and number, city, state, and ZIP code)
48 New Lots Avenue, Brooklyn, New York 11212

13c. Tel. No.
347-821-0245

13d. Cell No.

13e. Fax No.

13f. E-Mail Address

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print)
Micah Wheeler

Signature

Title
President

Date
5/21/19

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

ABM PARKING SERVICES INC.

Employer

and

Case 29-RC-242283

**LOCAL 122, BARCLAY CENTER CONVERSION
UNION**

Petitioner

DECISION AND ORDER DISMISSING PETITION

On May 29, 2019, Local 122, Barclay Center Conversion Union (Petitioner) filed the present petition seeking to represent a unit of all full-time and regular part-time parking attendants and cashiers employed by ABM Parking Services Inc. (Employer) working at LaGuardia Airport, and excluding all other employees including guards, and supervisors as defined in the National Labor Relations Act.¹

After the petition was filed, the International Union of Journeyman and Allied Trades, Local 726 (Intervenor) and the Employer asserted that the processing of the petition is barred by an existing collective bargaining agreement between the Employer and the Intervenor. The collective-bargaining agreement, containing substantial terms and conditions of employment, was signed on May 14, 2019 and is in effect from September 14, 2018 through May 15, 2020. Under these circumstances, a petition must be filed not more than ninety days but over sixty days before the end of the contract period. Petitioner filed this petition on May 29, 2019, more than ninety days before the expiration of the contract bar period. The petition, therefore, is untimely filed.

Based on the foregoing, **IT IS ORDERED** that the Petitioner's petition is dismissed.

IT IS FURTHER ORDERED that any Notice of Representation Hearing previously issued in this matter is withdrawn.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by June 19, 2019.

¹ The Petitioner filed a previous RC Petition on May 16, 2019 in 29-RC-241568. However, this petition was served on the Employer at the wrong address, leading to its withdrawal and the filing of the present petition.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: June 5, 2019



KATHY DREW-KING
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 29
Two Metro Tech Center
Suite 5100
Brooklyn, NY 11201-3838

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
RD PETITION

Case No.

22-RD-246774

Date Filed

AUG 19, 2019

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 7 below) and a certificate of service showing service on the employer and all other parties named in the petition; (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. **PURPOSE OF THIS PETITION: RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE)** - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer READINGTON FARMS, INC		2b. Address(es) of Establishment(s) involved (Street and number, city, state, ZIP code) 12 MILL RD, WHITEHOUSE STATION, NJ 08889	
3a. Employer Representative - Name and Title MELISSA A. PARISI, V.P		3b. Address (If same as 2b - state name) SAME	
3c. Tel. No. 908-534-2121	3d. Fax No.	3e. Cell No.	3f. E-Mail Address MELISSA.A.HIF@walcefern.com

4a. Type of Establishment (Factory, mine, wholesaler, etc.) WAREHOUSE AND DISTRIBUTION	4b. Principal product or service MILK DELIVERY
--	--

5a. Description of Unit Involved Included: ALL OF FULL TIME AND PART TIME DRIVERS, HELPERS Excluded: SUPERVISERS, WAREHOUSE	5b. City and State where unit is located: WHITEHOUSE STATION, NJ
---	--

6. No. of Employees in Unit 45	7. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
--	--

8a. Name of Recognized or Certified Bargaining Agent LOCAL UNION 863	8b. Affiliation, if any I.B.T
--	---

8c. Address 209 SUMMIT ROAD MOUNTAINSIDE, NJ 07092	8d. Tel. No. 908-654-6990	8e. Cell No. (b) (6), (b) (7)(C)	8f. Fax No. (b) (6), (b) (7)(C)
--	-------------------------------------	--	---

9. Date of Recognition or Certification 08/06/2018	10. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)
--	---

11a. Is there now a strike or picketing at the Employer's establishment(s) involved? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	11b. If so, approximately how many employees are participating?
--	---

11c. The Employer has been picketed by or on behalf of (Insert Name) (Insert Address)	a labor organization, of since (Month, Day, Year)
--	--

12. Organizations or individuals other than those named in items 8 and 11c, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5 above. (If none, so state)

12a. Name LOCAL UNION 863	12b. Address 209 SUMMIT ROAD MOUNTAINSIDE, NJ 07092	12c. Tel. No. 908-654-6990	12d. Fax No.
		12e. Cell No.	12f. E-Mail Address

13. **Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.

13a. Election Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail	13b. Election Date(s)	13c. Election Time(s)	13d. Election Location(s)
--	-----------------------	-----------------------	---------------------------

14. (b) (6), (b) (7)(C)

14a. Address (Street and number, city, state, ZIP code) (b) (6), (b) (7)(C)	14b. Tel. No. (b) (6), (b) (7)(C)	14c. Fax No.
	14d. Cell No. (b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)

14f. Affiliation, if any **NONE**

15. **Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.**

15a. Name	15b. Title	
15c. Address (Street and number, city, state, ZIP code) (b) (6), (b) (7)(C)	15d. Tel. No.	15e. Fax No.
	15f. Cell No.	15g. E-Mail Address

I declare that I have read the above petition and that (b) (6), (b) (7)(C) the best of my knowledge and belief.

(b) (6), (b) (7)(C)	Signature	Title 8-19-19	Date Filed
---------------------	-----------	-------------------------	------------

WILL OF FALSE STATEMENTS ON THIS

PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
FALSITY STATEMENT



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 22
20 WASHINGTON PL
FL 5
NEWARK, NJ 07102-3127

Agency Website: www.nlrb.gov
Telephone: (973)645-2100
Fax: (973)645-3852

September 4, 2019

(b) (6), (b) (7)(C)

Re: Readington Farms, Inc.
Case 22-RD-246774

Dear (b) (6), (b) (7)(C):

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

Decision to Dismiss: As a result of the investigation, I find that further proceedings are unwarranted. The investigation disclosed that the above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

The instant Decertification Petition was filed by the Petitioner, (b) (6), (b) (7)(C), on August 19, 2019, seeking an election among certain employees of the Employer, Readington Farms, Inc., in order to determine whether the Union, International Brotherhood of Teamsters, Local Union No. 863, continues to enjoy the support of a majority of the employees as the collective bargaining representative of the drivers and helpers employed by the Employer at its Whitehouse Station, New Jersey facility (herein "the Unit"). On August 6, 2018, after a Representation election was conducted in Case 22-RC-222654, the undersigned Regional Director certified the Union as the exclusive collective bargaining representative of the employees in the Unit ("Certification").

After the August 6, 2018 Certification, the Union and the Employer commenced negotiations. Those negotiations were successfully concluded in the Summer 2019 when the parties expressly agreed to the terms of an initial collective bargaining agreement ("the Agreement") that included the substantial terms and conditions of employment of the Unit employees. The terms of the Agreement were summarized in a Memorandum of Agreement ("MOA") executed by the parties on July 24, 2019. The parties' MOA outlined the terms of the Agreement and specifically stated that the Agreement would be effective upon ratification by the Unit employees. Thereafter, on August 2, 2019, the Union sent out a description of the Agreement accompanied by mail ballots to the Unit employees, and requested that the employees ratify the Agreement. The completed ratification ballots were required to be returned to the Union postmarked no later than August 13, 2019. Thereafter, the ballots were collected and counted by the Union at its offices on August 22, 2019. The tally of ballots ratified the

agreement. In the interim period between the ballots being mailed and being counted, the Petitioner filed the instant petition on August 19, 2019.

Based on the foregoing, I conclude that the Union and the Employer had entered into a valid, enforceable collective bargaining agreement prior to the filing of the instant petition and, thus, the instant petition must be dismissed. In this regard, the Board has long-held that under well-defined circumstances, a representation petition cannot be processed if there is a collective bargaining agreement in effect. The Board has laid out specific requirements for when a collective bargaining agreement will bar a petition. See *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). Among these requirements is that the agreement must be signed by the parties and that it set out the agreement's effective date. The terms of a collective bargaining agreement, including the effective date, must "be sufficient on its face without having to resort to parol evidence, so that the employees and outside unions may determine the appropriate time for filing petitions." See *Cooper Tire & Rubber Co.*, 181 NLRB 509 (1970). All such requirements have been satisfied in the instant case.

In this respect, the investigation revealed that the Petitioner and the Employer signed the MOA that specified the terms of the agreement, including its effective date, which is the date of ratification. The investigation also revealed that the employees ratified the agreement on August 13, 2019. The Board has long-held that the critical date in determining when employees ratified a collective bargaining agreement is the date they actually voted on ratification and not the day such votes are counted. See *American Protective Services, Inc.*, 319 NLRB 902 (1995); See also *Felbro, Inc.*, 274 NLRB 1268 (1985); *Garment Workers Local 512 v. NLRB*, 795 F.2d 705 (9th Cir. 1986). In *American Protective*, *supra* at 903 fn. 5, the Board noted specifically that the counting of the ballots is "a mere ministerial task" that has no bearing on the employees' choice. The Board determined that when the count takes place is immaterial to the employees' choice since the choice was actually made when the employees cast their ballots and, thus, the date of the count cannot be used to determine the employees' choice if the actual voting occurred sometime prior thereto. In the instant case, it is undisputed that the ballots were required to have been postmarked for return by no later than August 13, 2019, the deadline date by which the employees decided whether to accept the agreement or to reject it. Accordingly, I conclude that the instant petition was filed after the employees actually voted to ratify the agreement notwithstanding that the ministerial task of tallying the employees' ballots occurred after the filing of the petition and, therefore, I am dismissing the petition.

The investigation revealed further that the parties explicitly agreed that the collective bargaining agreement would be effective on the date of its ratification. The terms of the MOA were executed by both the Employer and the Union on July 24, 2019, prior to the filing of the petition. The MOA specifically notes that the effective date of the collective bargaining agreement is the date of ratification. As noted above, the employees ratified the Agreement on August 13, 2019, before the petition was filed.

A negotiated agreement bars petitions filed during the time it is in effect for up to three years from its effective date until the period designated by the Board as its window period for filing, or its expiration. See *General Cable Corp.*, 139 NLRB 1123 (1962). A petition, however, can be processed even after ratification if the petition is filed before the effective date of the agreement. See *Silvan Industries*, 367 NLRB No. 28 (2018). In *Silvan*, the Board found that a ratified collective bargaining agreement was not a bar to the processing of a petition because the

petition was filed after a ratification vote but before the agreement's effective date. In the instant case, however, the effective date of the agreement was specifically agreed to as the date of ratification. Therefore, the ratification date and the effective date of the agreement (August 13, 2019) occurred prior to August 19, 2019, the filing date of the petition and, therefore, the petition is barred as the Agreement was in effect at the time of its filing. Thus, a question concerning representation involving the bargaining unit employees involved herein cannot be entertained in this matter at this time. Accordingly, I am dismissing the petition in this matter.

Right to Request Review: Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.

Procedures for Filing Request for Review: A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **September 18, 2019**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on September 18, 2019**.

Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement

that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,

/s/ Richard Fox

Richard Fox
Acting Regional Director

cc: Office of the Executive Secretary (by e-mail)

MELISSA A. PARISI, VICE PRESIDENT
READINGTON FARMS, INC.
12 MILL ROAD
WHITE HOUSE, NJ 08889

ROBERT PETTIGREW, ESQ.
WHITE AND WILLIAMS LLP
1037 RAYMOND BLVD
SUITE 230
NEWARK, NJ 07102

CHARLES E. O'MARA, BUSINESS AGENT
LOCAL 863, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS
209 SUMMIT RD
MOUNTAINSIDE, NJ 07092-2304

KENNETH I. NOWAK, ESQ.
ZAZZALI, FAGELLA, NOWAK, KLEINBAUM &
FRIEDMAN
570 BROAD STREET, SUITE 1402
NEWARK, NJ 07102

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
RC PETITION

DO NOT WRITE IN THIS SPACE

Case No.


29-RC-247635

Date Filed

9/5/2019

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov/, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer: Five Star Carting, Inc.		2b. Address(es) of Establishment(s) involved (Street and number, City, State, ZIP code): 860 Humboldt Street Brooklyn, NY 11222	
3a. Employer Representative - Name and Title: Anthony Tristani		3b. Address (if same as 2b - state same): 58-35 47th Street Maspeth, NY 11378	
3c. Tel. No. (718) 349-7555	3d. Cell No.	3e. Fax No.	3f. E-Mail Address
4a. Type of Establishment (Factory, mine, wholesaler, etc.) Waste Management		4b. Principal Product or Service Waste Management Services	5a. City and State where unit is located: Brooklyn, NY
5b. Description of Unit Involved: Included: All full-time and part-time employees Excluded: Clerical and professional employees, guards, supervisors			6a. Number of Employees in Unit: 130-150
6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Check One: <input type="checkbox"/> 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (if no reply received, so state). <input type="checkbox"/> 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.			
8a. Name of Recognized or Certified Bargaining Agent (if none, so state) LIFE Local 890		8b. Address: 325 73rd Street, Brooklyn, NY 11209	
8c. Tel. No. (718) 238-2399	8d. Cell No.	8e. Fax No.	8f. E-Mail Address
8g. Affiliation, if any:		8h. Date of Recognition or Certification	8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year) 5/1/2020
9. Is there now a strike or picketing at the Employer's establishment(s) involved? No If so, approximately how many employees are participating? _____ (Name of Labor Organization) _____, has picketed the Employer since (Month, Day, Year) _____			
10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state) None			
10a. Name	10b. Address	10c. Tel. No.	10d. Cell No.
		10e. Fax No.	10f. E-Mail Address
11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election: 11a. Election Type: <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
11b. Election Date(s): Any weekday (M-F)	11c. Election Time(s): 4AM-12PM	11d. Election Location(s): Company facility	
12a. Full Name of Petitioner (including local name and number): Waste Material, Recycling, and General Industrial Laborers' Local 108		12b. Address (street and number, city, State and ZIP code): 121 E 24 Street New York, NY 10010	
12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state): Laborers' International Union of North America, AFL-CIO			
12d. Tel. No. (212) 925-9634	12e. Cell No.	12f. Fax No.	12g. E-Mail Address
13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.			
13a. Name and Title: Tamir Rosenblum, Esq., General Counsel Mason Tenders District Council of Greater New York		13b. Address (street and number, city, State and ZIP code): 520 8th Avenue, Suite 650 New York, NY 10018	
13c. Tel. No. (212) 452-9451	13d. Cell No.	13e. Fax No.	13f. E-Mail Address trosenblum@masontenders.org
I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.			
Name (Print) Tamir Rosenblum	Signature 	Title General Counsel	Date 9/4/2019

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

FIVE STAR CARTING, INC.

Employer

and

Case No. 29-RC-247635

WASTE MATERIAL, RECYCLING AND GENERAL INDUSTRIAL
LABORERS' LOCAL 108

Petitioner

and

LIFE LOCAL 890

Intervenor

**ORDER DISMISSING PETITION AND WITHDRAWING
NOTICE OF REPRESENTATION HEARING**

On September 5, 2019, Waste Material, Recycling and General Industrial Laborers' Local 108 (Petitioner) filed the present petition seeking an election to represent all full-time and part-time employees employed by Five Star Carting, Inc. (Employer) at 860 Humboldt Street, Brooklyn, New York, excluding clerical and professional employees, guards and supervisors as defined in the National Labor Relations Act.

On September 5, 2019, the undersigned issued a Notice of Representation Hearing scheduling a hearing for September 13, 2019 at 9:30 AM in our office.

After the Petition was filed, League of International Federated Employees, Local 890 (Intervenor) asserted that the petition is barred by existing collective bargaining agreements between the Employer and the Intervenor. The two collective bargaining agreements covering the petitioned-for unit are effective from April 22, 2017 to April 21, 2020, contain substantial terms and conditions of employment and are signed and dated by the Employer and the Intervenor. Under these circumstances, a petition must be filed not more than ninety days but over sixty days before the end of the contract period.

Petitioner filed this petition on September 5, 2019, more than ninety days before the expiration of the contract period. The petition, therefore, is untimely filed.

I find that based on the foregoing, **IT IS ORDERED** that Petitioner's petition is dismissed.

IT IS FURTHER ORDERED that any Notice of Representation Hearing previously issued in this matter is withdrawn.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, a request for review of this Order may be filed with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (5 p.m. Eastern Time) on September 25, 2019, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on September 25, 2019.

Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed

instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or faster manner as that utilized in filing the request with the Board.

Dated: September 11, 2019



Kathy Drew-King
Regional Director, Region 29
National Labor Relation Board
Two Metro Tech Center.
Brooklyn, NY 11201-3838

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RD PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 22-RD-249064	Date Filed SEP 27, 2019

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. **PURPOSE OF THIS PETITION:** RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer: **MEADOWLANDS RACING & ENT.** 2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code): **1 RACE TRACK RD. EAST RUTHERFORD N.J.**

3a. Employer Representative - Name and Title: **LINDSAY NEWHART** 3b. Address (If same as 2b - state same): **SAME** 3c. Tel. No.: **201-842-5050** 3d. Cell No.: **07073**

3e. Fax No.: **LNEWHART@PLAYMEADOWLANDS.COM** 3f. E-Mail Address: **LNEWHART@PLAYMEADOWLANDS.COM**

4a. Type of Establishment (Factory, mine, wholesaler, etc.): **HORSE RACING - SPORTSBOOK** 4b. Principal product or service: **CAMBLING** 5a. City and State where unit is located: **S. CON**

5b. Description of Unit Involved: Included: **40 MEADOWLANDS RACING AND ENTERTAINMENT** Excluded: **CASHIERS** 6a. No. of Employees in Unit: **40**

6b. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative? Yes ☒ No ☐

Check One: ☐ 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about _____ (Date) (If no reply received, so state).

☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent: **LABOR INT'L UNION OF N. AMERICA** 8b. Address: **121 E 24TH ST. N.Y. N.Y. 10010**

8c. Tel. No.: **212-925-9634** 8d. Cell No.: **LOCAL 108** 8e. Fax No.: **UNKNOWN** 8f. E-Mail Address: **UNKNOWN**

8g. Affiliation, if any: **UNKNOWN** 8h. Date of Recognition or Certification: **UNKNOWN** 8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year): **UNKNOWN**

9. Is there now a strike or picketing at the Employer's establishment(s) involved? **NO** If so, approximately how many employees are participating? _____ (Name of labor organization) _____ has picketed the Employer since (Month, Day, Year) _____

10. Organizations or individuals other than those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state) **FANDELL SPORTSBOOK**

10a. Name: **FANDELL SPORTSBOOK** 10b. Address: **BETHAIR 158 JERSEY CITY N.J.** 10c. Tel. No.: **877-685-0662** 10d. Cell No.: **07303**

10e. Fax No.: **07303** 10f. E-Mail Address: **07303**

11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election. 11a. Election Type: ☒ Manual ☐ Mail ☐ Mixed Manual/Mail 11b. Election Date(s): **TAD** 11c. Election Time(s): **T3D** 11d. Election Location(s): **1 RACE TRACK RD. E. RUTHERFORD N.J. 07073**

12. (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state) **LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 108**

12d. Tel. No.: **212-925-9634** 12e. Cell No.: **212-925-0941** 12f. Fax No.: **212-925-0941** 12g. E-Mail Address: **212-925-0941**

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation (b) (6), (b) (7)(C)

13a. Name and Title: **(b) (6), (b) (7)(C)** 13b. Address (street and number): **(b) (6), (b) (7)(C)**

13c. Cell No.: **(b) (6), (b) (7)(C)** 13d. Fax No.: **(b) (6), (b) (7)(C)**

13e. Fax No.: **(b) (6), (b) (7)(C)**

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief. (b) (6), (b) (7)(C) Sig (b) (6), (b) (7)(C) Date 9/26/2019

WILLFUL FALSE STATEMENT IS PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 22
20 WASHINGTON PL
FL 5
NEWARK, NJ 07102-3127

Agency Website: www.nlrb.gov
Telephone: (973)645-2100
Fax: (973)645-3852

October 25, 2019

(b) (6), (b) (7)(C)

Re: Meadowlands Racing & Entertainment.
Case 22-RD-249064

Dear (b) (6), (b) (7)(C):

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

Decision to Dismiss: As a result of the investigation, I find that further proceedings are unwarranted. The petition seeks an election to determine whether a majority of employees represented by the Union, Local 108, LIUNA, AFL-CIO, for purposes of collective bargaining, continue to desire such representation. The Union represents a unit consisting of all full-time and regular part-time cashiers employed by the Employer.

It is undisputed that the Employer herein is engaged in the operation of a racetrack for horseracing, and is an integral part of the horseracing industry. Section 103.3 of the Board's Rules and Regulations states the following: "The Board will not assert its jurisdiction in any proceeding under Sections 8, 9, and 10 of the Act involving the horseracing and dogracing industries." In 1972, in a statement issued concurrently with this rule, the Board noted that it "consistently declined to assert jurisdiction over labor disputes in the horseracing and dogracing industries as well as over labor disputes involving employers whose operations are an integral part of these racing industries." Citing *Pinkerton's National Detective Agency*, 114 NLRB 1363 (1955) (security guard services at a racetrack) and *Hotel & Restaurant Employees & Bartenders International Union, Local 343 (Resort Concessions, Inc.)*, 148 NLRB 208 (1964) (food and concession vendors at a racetrack). The Board further reiterated its rationale for declining to assert jurisdiction over the horseracing and dogracing industries because of the "extensive State control" over these industries. In the statement accompanying the rule, the Board pointed out that, in general, "the State licenses employees, exercises close supervision over the industries through State racing commissions, and in many States retains the right to effect the discharge of employees whose conduct jeopardize the 'integrity' of the industry." Moreover, the Board has concluded that racetrack operations, while exercising some impact on interstate commerce, was essentially local in character, and the effect of labor disputes involving racetrack enterprises was not sufficiently substantial to warrant assertions of jurisdiction. See also *Centennial Turf Club*, 192 NLRB 698 (1971); *Walter A. Kelley*, 139 NLRB 744 (1962); *Meadow Stud, Inc.*, 130 NLRB 1202 (1961); *Hialeah Race Course*, 125 NLRB 388 (1960); *Los Angeles Turf Club*, 90 NLRB 20 (1950).

Similarly, Section 14(c)(1) authorizes the Board, in its discretion, to decline to exercise jurisdiction over any class or category of employers when a labor dispute involving such employees is not sufficiently substantial to warrant the exercise of jurisdiction, provided that it cannot refuse to exercise jurisdiction over any labor dispute over which it would have asserted jurisdiction under the standards it had in effect on August 1, 1959. In accordance with this provision, and as previously stated, the Board has determined that it will not exercise jurisdiction over racetracks, owners, breeders, and trainers of racehorses, and real estate brokers.

Even assuming *arguendo* that the Board could assert jurisdiction over the Employer, the investigation revealed further that the Employer and the Union entered into a successor collective bargaining agreement (the Agreement) covering the terms and conditions of employment of the bargaining unit employees involved herein, and which is effective by its terms retroactively from February 1, 2019 to December 31, 2022. The Agreement was signed by the Union on August 2, 2019 and by the Employer on August 3, 2019, prior to the September 27 filing date of the petition. The Union asserts that this contract should serve as a bar to this petition.

The Board's contract-bar rule is designed to achieve "a finer balance between the statutory policies of stability in labor relations and the exercise of free choice in the selection or change of bargaining representatives." *Appalachian Shale Products Co.*, 121 NLRB 1160, 1161 (1958). The "Board has discretion to apply a contract bar or waive its application consistent with the facts of a given case, guided overall by [its] interest in stability and fairness in collective-bargaining agreements." *Madelaine Chocolate Novelties*, 333 NLRB 1312 (2001) (quoting *Direct Press Modern Litho, Inc.*, 328 NLRB 860, 861 (1999)).

In order to bar an election under the contract-bar rule, a contract must meet certain formal and substantive requirements. The contract must contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship and both parties must sign the contract prior to the filing of the petition that it would bar. *Seton Medical Center*, 317 NLRB 87 (1995). This requirement "does not mean that contracts must be formal documents or that they cannot consist of an exchange of a written proposal and a written acceptance." *Pontiac Ceiling & Partition Co.*, 337 NLRB 120, 123 (2001). The documents relied on to meet those requirements, however, must clearly set out the terms of the agreement and leave no doubt that they amount to an offer and acceptance of those terms. *Branch Cheese*, 307 NLRB 239 (1992); *Georgia Purchasing, Inc.*, 230 NLRB 1174 (1977).

I find that the Employer and the Union had signed off on a new agreement covering the bargaining-unit employees prior to the filing of the petition in this matter. Therefore, that agreement serves as a contract bar to further processing of the petition.

Accordingly, I am dismissing the petition in this matter.

Right to Request Review: Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.

Procedures for Filing Request for Review: A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **November 8, 2019**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on November 8, 2019**.

Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,



Eric Schechter
Acting Regional Director

cc: Office of the Executive Secretary (by e-mail)

LINDSAY NEWHART
MEADOWLANDS RACING &
ENTERTAINMENT
1 RACETRACK RD
RUTHERFORD, NJ 07073

DOUGLAS E. SOLOMON, ESQ.
GENOVA BURNS LLC
494 BROAD STREET, 5TH FLOOR
NEWARK, NJ 07102-3229

TAMIR ROSEBLUM, ESQ.
LIUNA LABORERS LOCAL 108
520 EIGHTH AVENUE, SUITE 650
NEW YORK, NY 10018-6539

LOCAL 108, LIUNA, AFL-CIO
121 EAST 24TH STREET
NEW YORK, NY 10010